

EXHIBIT A

FOURTH AMENDMENT TO THE CENTRAL CORE REDEVELOPMENT PLAN

WRITTEN FINDINGS AND RESPONSES PURSUANT  
TO HEALTH AND SAFETY CODE SECTION 33363

City Council of the City of Sunnyvale

January 6, 2004

## I. PURPOSE

The Redevelopment Agency of the City of Sunnyvale (the "Agency") has prepared, and the City Council of the City of Sunnyvale (the "City Council") is considering for adoption the Fourth Amendment to the Central Core Redevelopment Plan (the "Plan Amendment"). On December 16, 2003, the Agency and the City Council conducted a duly noticed joint public hearing on the Plan Amendment in accordance with the requirements of Health and Safety Code Sections 33355 and 33361. At or prior to the joint public hearing, the Agency and the City Council received certain written comments or objections to the Plan Amendment. Those written comments or objections are listed in Part II and set forth in full in Appendix I of this document.

Health and Safety Code Section 33363 states:

*"At the hour set in the notice required by Section 33361 for hearing objections, the legislative body shall proceed to hear all written and oral objections. Before adopting the Plan, the legislative body shall evaluate the report of the Agency, the report and recommendation of the Planning Commission, and all evidence and testimony for and against the adoption of the Plan and shall make written findings in response to each written objection of an affected property owner or taxing entity. The legislative body shall respond in writing to the written objections received before or at the noticed hearing, including any extensions thereof, and may additionally respond to written objections that are received after the hearing. The written responses shall describe the disposition of the issues raised. The legislative body shall address the written objections in detail, giving reasons for not accepting specified objections and suggestions. The legislative body shall include a good-faith, reasoned analysis in its response and, for this purpose, conclusionary statements unsupported by factual information shall not suffice."*

This document constitutes the written findings and responses of the City Council, as the legislative body of the City of Sunnyvale, prepared and adopted in accordance with the requirements of Health and Safety Code Section 33363. Specifically, Part III below contains the City Council's written findings and responses to the written comments or objections set forth in Part II and Appendix I.

Each substantive comment or objection listed in Part II and set forth in Appendix I has been assigned a reference identification number in the margin next to the comment or objection. The City Council's written findings and responses to each substantive comment or objection are set forth and organized in Part III according to those reference identification numbers.

These findings incorporate other documents, which are part of the record of adoption of the Plan Amendment. These documents are listed below and are incorporated within these findings as supporting evidence by this and subsequent references:

- A. The Fourth Amendment to the Central Core Redevelopment Plan (the "Plan Amendment");
- B. The Report on Fourth Plan Amendment, dated December 2003 (the "Report");

- C. The Program Environmental Impact Report ("the EIR") prepared pursuant to the California Environmental Quality Act ("CEQA") to consider and analyze the environmental impacts related to adoption of amendments to the Land Use and Transportation Element of the General Plan, the Downtown Specific Plan and the Zoning Code. The EIR was certified by the City Council at its June 17, 2003 meeting (Resolution No. 123-03).
- D. Documentary and oral evidence received by the City of Sunnyvale Planning Commission, the Agency and the City Council during public hearings and meetings on the Plan Amendment including, without limitation, staff reports submitted to the City Council and Agency at the December 16, 2003 joint public hearing on the Plan Amendment; and
- E. Matters of common knowledge to the City Council and the Agency which they have considered, such as the City General Plan and prior resolutions and ordinances of the Agency and the City of Sunnyvale (the "City").

## II. WRITTEN COMMENTS AND OBJECTIONS

Written comments or objections to the Plan Amendment were received directly by the City or Agency from the following persons:

- 1. Email from Chris Carpenter, dated December 16, 2003
- 2. Email from Margaret Murguia of Lowlanders Homeowners Association, dated December 16, 2003
- 3. Letter from David R. Daniels of Jeffer, Mangels, Butler & Marmaro LLP, dated December 16, 2003

The above emails and letters are set forth in their entirety in Appendix 1 to this Exhibit A.

## III. WRITTEN FINDINGS AND RESPONSE OF CITY COUNCIL

- 1. **Chris Carpenter, dated December 16, 2003**

### **Comment 1.1**

Comment: The commenter says that eminent domain only works as a bargaining tool if the City is willing to implement it and says to vote NO on eminent domain.

Response: The Report documents that there is remaining blight in the redevelopment project area (the "Project Area") that may require the acquisition of **non-residential** property to alleviate. The Agency currently has no plans to acquire any properties, but recognizes that it can

be an important tool in revitalizing neighborhoods, especially neighborhoods that exist in the Project Area where there are blighted properties in multiple ownership as documented in Parts II and III of the Report. Furthermore, as set forth in Part VI of the Report, the Agency and the City have adopted policies that require that the Agency's activities be carried out in a manner which minimizes relocation and hardship. In the event of acquisition of any property, the Agency will follow all state and local laws regarding acquisition of property and will pay fair market value for any properties acquired. In addition, the Agency is required by state law to pay relocation benefits to any displaced business. While the Agency has developed and implemented successful programs to promote redevelopment of blighted properties and alleviate blighting conditions that remain in the Project Area, the use of eminent domain remains necessary as a last resort to deal with those blighting conditions that remain in the Project Area.

Findings: Based on the above, the City Council finds and determines that it is necessary to maintain the right of eminent domain over non-residential properties in the redevelopment plan as an important and necessary, although limited, tool to be used as a last resort to alleviate blighting conditions in the Project Area. On this basis and to the extent the above comment is an objection to Plan Amendment, the City Council respectfully overrules the above objection.

**2. Margaret Murguia of Lowlanders Homeowners Association, dated December 16, 2003**

**Comment 2.1**

Comment: The commenter believes eminent domain is a bad idea and expresses concern that no one should have to give up their home to developers.

Response: Firstly, the text of the Plan Amendment plainly extends the power of eminent domain to **only non-residential** properties, so no one will give up a home under this Plan Amendment. Additionally, the Report documents that there is remaining blight in the Project Area that may require the acquisition of **non-residential** property to alleviate. The Agency currently has no plans to acquire any properties, but recognizes that it can be an important tool in revitalizing neighborhoods, especially neighborhoods that exist in the Project Area where there are blighted properties in multiple ownership as documented in Parts II and III of the Report. Furthermore, as set forth in Part VI of the Report, the Agency and the City have adopted policies that require that the Agency's activities be carried out in a manner which minimizes relocation and hardship. In the event of acquisition of any property, the Agency will follow all state and local laws regarding acquisition of property and will pay fair market value for any properties acquired. In addition, the Agency is required by state law to pay relocation benefits to any displaced business. While the Agency has developed and implemented successful programs to promote redevelopment of blighted properties and alleviate blighting conditions that remain in the Project Area, the use of eminent domain remains necessary as a last resort to deal with those blighting conditions that remain in the Project Area.

Findings: Based on the above, the City Council finds and determines that it is necessary to maintain the right of eminent domain over non-residential properties in the redevelopment plan as an important and necessary, although limited, tool to be used as a last resort to alleviate

blighting conditions in the Project Area. On this basis and to the extent the above comment is an objection to Plan Amendment, the City Council respectfully overrules the above objection.

**3. David R. Daniels, Esq. of Jeffer, Mangels, Butler & Marmaro LLP, dated December 16, 2003, representing Harvest SV/PEN, Ltd. ("SV/PEN")**

**Comment 3.1**

Comment: The commenter contends that the Plan Amendment violates the reciprocal easement agreement ("REA") for the Town Center Mall.

Response: The Plan Amendment does not prevent or prohibit any existing use of the Town Center Mall. Consequently, the approval of the REA parties is not required under the REA. Moreover, to the extent that the REA arguably does prevent amendment of the plan, the REA language is an improper delegation of government power to private parties and an abnegation of the regulatory and police power authority of the City Council and the Agency that is not permitted by law.

Findings: Based on the above, the City Council finds and determines that the Plan Amendment does not violate the REA. On this basis and to the extent the above comment is an objection to Plan Amendment, the City Council respectfully overrules the above objection.

**Comment 3.2**

Comment: The commenter objects to the reliance on the downtown plan EIR as the basis for consideration of the Plan Amendment.

Response: The EIR specifically mentions amendment of the Plan as part the project analyzed in the EIR. The scope of development that can be undertaken pursuant to the Redevelopment Plan as it will exist after the Plan Amendment is the scope of the development considered and studied in the EIR prepared for the recent amendments to the City's Downtown Plan. The EIR was a comprehensive analysis of the potential environmental effects of the potential implementation of the land uses that are contemplated by the Downtown Plan and the Redevelopment Plan. Rather than attempting to evade comprehensive analysis, the City and Redevelopment Agency adopted an approach whereby the comprehensive analysis of the potential land uses was studied first with the various steps taken to implement those land uses undertaken after and in reliance on the completion and certification of the EIR. To the extent that SV/PEN or anyone else in the Project Area applies for development that goes beyond the scope of what is contemplated by the Downtown Plan and the Redevelopment Plan or has environmental impacts that were not considered in the EIR, then additional environmental review including preparation of an initial study could be required under CEQA.

Findings: Based on the above, the City Council finds and determines that the EIR adequately addressed the environmental effects of the Plan Amendment. On this basis and to the extent the above comment is an objection to Plan Amendment, the City Council respectfully overrules the above objection.

### **Comment 3.3**

Comment: The commenter raises objections to proposed procedural changes in the City's zoning regulations that would allow consideration of land use applications in certain circumstances where all affected property owners had not consented to or signed the application.

Response: The proposed change in the City's zoning regulation procedure regarding application signatures is a separate action from the Plan Amendment. The changes to the zoning regulation may be adopted even if the Plan Amendment is not adopted and likewise the City may adopt the zoning regulation changes even if the Plan Amendment is not adopted. Consequently, the objection to the zoning regulation change is not relevant to and does not state an objection to the Plan Amendment. Additionally, consideration of the proposed procedural change to the City's zoning regulation has been postponed indefinitely, and may not be considered.

Findings: Based on the above, the City Council finds and determines that the changes to the zoning regulation are separate and distinct from the Plan Amendment. On this basis and to the extent the above comment is construed as an objection to Plan Amendment, the City Council respectfully overrules the above objection.

### **Comment 3.4**

Comment: The commenter contends that the Agency and City have failed to follow certain procedures required when a redevelopment plan is amended to extend the effectiveness deadline in the Redevelopment Plan.

Response: Under Health and Safety Code Sections 33333.2 and 33333.6, a redevelopment plan is required to have a deadline on the effectiveness of the plan. This deadline is separate and apart from any deadline on the exercise of the eminent domain authority contained in the plan. Consequently, the provisions of Health and Safety Code Section 33354.6 which dictate that certain procedures be followed when there is an amendment to a redevelopment plan that lengthens the effectiveness of the plan do not apply to this Plan Amendment, which does not propose an amendment to the Redevelopment Plan to extend its effectiveness date established pursuant to subsection (a) of Health and Safety Code Section 33333.6.

Findings: Based on the above, the City Council finds and determines that the proper procedures have been followed for the Plan Amendment. On this basis and to the extent the above comment is an objection to Plan Amendment, the City Council respectfully overrules the above objection.

### **Comment 3.5**

Comment: The commenter claims that the notices for the Plan Amendment were not adequate.

Response: The notice for the Plan Amendment was adequate and legal under Health and Safety Code Section 33449. As required by law, the notice contained a general statement of the

scope and objectives of the Plan Amendment. There is no requirement that the notice contain a detailed description of every aspect or provision of the Plan Amendment. Moreover, as best evidenced by the numerous letters written on behalf of SV/PEN by its counsel objecting to the Plan Amendment and appearance by counsel and principals at the Agency and City meetings at which the Plan Amendment was considered, the Agency and City notices in no way deterred or prevented SV/PEN from meaningful participation in the process for consideration of the Plan Amendment.

Findings: Based on the above, the City Council finds and determines that the notices regarding the Plan Amendment were legally adequate. On this basis and to the extent the above comment is an objection to Plan Amendment, the City Council respectfully overrules the above objection.

### **Comment 3.6**

Comment: The commenter states that it has not received owner participation opportunities.

Response: The Redevelopment Plan and the Agency's owner participation rules provide for participation by owners in the redevelopment process and procedures for that potential participation. The Agency has initiated this process with respect to properties within the Town Center Mall. Pursuant to this process SV/PEN and other owners of properties in the center have been invited to and, hence have the opportunity to make proposals for redevelopment of the mall parcels.

Findings: Based on the above, the City Council finds and determines that the owners of property within the Project Area are given opportunity to participate in redevelopment pursuant to the Redevelopment Plan and the Agency's owner participation rules. On this basis and to the extent the above comment is an objection to Plan Amendment, the City Council respectfully overrules the above objection.

### **Comment 3.7**

Comment: The commenter contends that the Plan Amendment violates the reciprocal easement agreement ("REA") for the Town Center Mall.

Response: This comment is the same as Comment 3.1, and the Response to Comment 3.1 above is incorporated by reference as the response to Comment 3.7.

Findings: Based on the above, the City Council finds and determines that the Plan Amendment does not violate the REA. On this basis and to the extent the above comment is an objection to Plan Amendment, the City Council respectfully overrules the above objection.

### **Comment 3.8**

Comment: The commenter argues that the EIR prepared for the Downtown Plan is not sufficient for the Plan Amendment.

Response: The EIR specifically mentions amendment of the Plan as part the project analyzed in the EIR. The scope of and nature of development in the Project Area contemplated by the Redevelopment Plan as amended by the Plan Amendment is the same as is contemplated by the Downtown Plan, as is best shown by the fact that the Plan Amendment adopts the Downtown Plan as the land use controls applicable to the Project Area. Consequently, reliance on the EIR for the Downtown Plan is proper. To the extent that SV/PEN or anyone else in the Project Area applies for development that goes beyond the scope of what is contemplated by the Downtown Plan and the Redevelopment Plan or has environmental impacts that were not considered in the EIR, then additional environmental review including preparation of an initial study could be required under CEQA.

Findings: Based on the above, the City Council finds and determines that the EIR adequately addressed the environmental effects of the Plan Amendment. On this basis and to the extent the above comment is an objection to Plan Amendment, the City Council respectfully overrules the above objection.

### **Comment 3.9**

Comment: The commenter contends that the City and Agency are not examining the environmental impacts of the redevelopment project as a whole.

Response: The EIR specifically mentions amendment of the Plan as part the project analyzed in the EIR, and addressed cumulatively impacts in its analysis. The scope of and nature of development in the Project Area contemplated by the Redevelopment Plan as amended by the Plan Amendment is the same as is contemplated by the Downtown Plan, as is best shown by the fact that the Plan Amendment adopts the Downtown Plan as the land use controls applicable to the Project Area. Consequently, reliance on the EIR for the Downtown Plan is proper. To the extent that SV/PEN or anyone else in the Project Area applies for development that goes beyond the scope of what is contemplated by the Downtown Plan and the Redevelopment Plan or has environmental impacts that were not considered in the EIR, then additional environmental review including preparation of an initial study could be required under CEQA.

Findings: Based on the above, the City Council finds and determines that the EIR adequately addressed the environmental effects of the Plan Amendment. On this basis and to the extent the above comment is an objection to Plan Amendment, the City Council respectfully overrules the above objection.

### **Comment 3.10**

Comment: This objection concerns the proposed procedural changes to the City's zoning regulations.

Response: The proposed change in the City's zoning regulation procedure regarding application signatures is a separate action from the Plan Amendment. The changes to the zoning regulation may be adopted even if the Plan Amendment is not adopted and likewise the City may adopt the zoning regulation changes even if the Plan Amendment is not adopted. Consequently,



the objection to the zoning regulation change is not relevant to and does not state an objection to the Plan Amendment.

Findings: Based on the above, the City Council finds and determines that the changes to the zoning regulation are separate and distinct from the Plan Amendment. On this basis and to the extent the above comment is construed as an objection to Plan Amendment, the City Council respectfully overrules the above objection.

### **Comment 3.11**

Comment: This comment repeats the CEQA objections raised in earlier comments as to the previously proposed changes to the zoning regulation.

Response: First, this comment is irrelevant to the Plan Amendment as it concerns the CEQA process for the proposed change to the zoning regulations. However, to the extent the comment address the CEQA process for the Plan Amendment, the City responds that the EIR specifically mentions amendment of the Plan as part the project analyzed in the EIR, and addressed cumulatively impacts in its analysis. The scope of and nature of development in the Project Area contemplated by the Redevelopment Plan as amended by the Plan Amendment is the same as is contemplated by the Downtown Plan, as is best shown by the fact that the Plan Amendment adopts the Downtown Plan as the land use controls applicable to the Project Area. Consequently, reliance on the EIR for the Downtown Plan is proper. To the extent that SV/PEN or anyone else in the Project Area applies for development that goes beyond the scope of what is contemplated by the Downtown Plan and the Redevelopment Plan or has environmental impacts that were not considered in the EIR, then additional environmental review including preparation of an initial study could be required under CEQA.

Findings: Based on the above, the City Council finds and determines that the changes to the zoning regulation are separate and distinct from the Plan Amendment and that the EIR adequately addressed the environmental effects of the Plan Amendment. On this basis and to the extent the above comment is an objection to Plan Amendment, the City Council respectfully overrules the above objection.

### **Comment 3.12**

Comment: This objection reiterates the objections discussed above in Response 3.1 and 3.6 concerning the REA and owner participation rights.

Response: This comment is the same as Comments 3.1 and 3.6, and the Responses to Comments 3.1 and 3.6 above are incorporated by reference as the response to this Comment 3.12.

Findings: Based on the above, the City Council finds and determines that the Plan Amendment does not violate the REA or any owner participation rights. On this basis and to the extent the above comment is an objection to Plan Amendment, the City Council respectfully overrules the above objection.

### **Comment 3.13**

Comment: The commenter requests that the adoption of the Plan Amendment be delayed.

Response: The request of SV/PEN that the adoption of the Plan Amendment be delayed is acknowledged. The reasons for this request encompass all the objections SV/PEN set out in their counsel's November 24, 2003 letter; those objections are discussed in the Responses to Comments 3.5, 3.6, 3.7, 3.8, 3.9, 3.10, 3.11 and 3.12 above, which are incorporated herein as the Response to Comment 3.13. The Planning Commission did proceed with action on November 24, 2003 and recommended approval of the Plan Amendment to the City Council.

Findings: Based on the above, the City Council finds and determines that the Planning Commission has moved forward with the Plan Amendment despite the request of the commenter. On this basis and to the extent the above comment is an objection to Plan Amendment, the City Council respectfully overrules the above objection.

### **Comment 3.14**

Comment: This comment sets forth SV/PEN's objections to the Planning Commission's consideration of amendments to the Downtown Plan and zoning regulation adopted to implement changes to the City's General Plan made in June of 2003.

Response: This letter is not an objection to the adoption of the Plan Amendments. Rather this letter objects to the Planning Commission's consideration of amendments to the Downtown Plan and zoning regulation. Those changes have already been adopted by the City and those objections are not generally relevant to adoption of the Plan Amendment. This letter also states objections related to consideration of General Plan amendments requested by Forum Development Group and Lehman ALI with respect to certain aspects of development for the Town Center Mall. Those later amendments have not been adopted and are not under consideration in connection with the consideration of the Plan Amendment. The actions that are the subject of this letter are referred to in these responses as the "General Plan Actions."

Findings: Based on the above, the City Council finds and determines that the Planning Commission has moved forward with the amendments to the Downtown Plan and zoning regulation despite the request of the commenter. On this basis and to the extent the above comment is an objection to Plan Amendment, the City Council respectfully overrules the above objection.

### **Comment 3.15**

Comment: This comment raises an objection to the notice given for the General Plan Actions.

Response: There is no claim that the alleged inadequacy of the notice for the General Plan Actions in any way affected the notice for the Plan Amendment. As noted in the Response to Comment 3.5, the notice for the Plan Amendment complies with the law.

Findings: Based on the above, the City Council finds and determines that the adequacy of the notice for the General Plan Actions in no way affected the notice for the Plan Amendment. On this basis and to the extent the above comment is an objection to Plan Amendment, the City Council respectfully overrules the above objection.

### **Comment 3.16**

Comment: In this comment, SV/PEN objects to the City's failure to provide documents in response to a Public Records Act request related to the General Plan Actions.

Response: There is no claim that the alleged inadequacy of the response to the Public Records Act request in any way affected SV/PEN's ability to object to the Plan Amendment. Moreover, SV/PEN has been provided with all documents it has requested and which may be disclosed under the Public Records Act.

Findings: Based on the above, the City Council finds and determines that the issue of whether the City provided documents to SV/PEN under the Public Records Act in connection with the General Plan Actions in no way affect the Plan Amendment. On this basis and to the extent the above comment is an objection to Plan Amendment, the City Council respectfully overrules the above objection.

### **Comment 3.17**

Comment: In this comment, SV/PEN objects to the adequacy of the Forum Development/Lehman General Plan amendment applications.

Response: As noted above, those amendments are not under consideration in connection with the Plan Amendment. Consequently, no alleged defect in those applications is relevant to the Plan Amendment.

Findings: Based on the above, the City Council finds and determines that the adequacy of the Forum Development/Lehman General Plan amendment applications in no way affect the Plan Amendment. On this basis and to the extent the above comment is an objection to Plan Amendment, the City Council respectfully overrules the above objection.

### **Comment 3.18**

Comment: In this comment, SV/PEN objects to the CEQA process for the Downtown Plan and zoning amendments.

Response: The Downtown Plan and zoning amendments have already been adopted. This comment is irrelevant to the Plan Amendment as it concerns the CEQA process for the proposed change to the Downtown Plan and zoning amendments. However, to the extent the comment address the CEQA process for the Plan Amendment, the City responds that the EIR specifically mentions amendment of the Plan as part the project analyzed in the EIR, and addressed cumulatively impacts in its analysis. The scope of and nature of development in the

Project Area contemplated by the Redevelopment Plan as amended by the Plan Amendment is the same as is contemplated by the Downtown Plan, as is best shown by the fact that the Plan Amendment adopts the Downtown Plan as the land use controls applicable to the Project Area. Consequently, reliance on the EIR for the Downtown Plan is proper. To the extent that SV/PEN or anyone else in the Project Area applies for development that goes beyond the scope of what is contemplated by the Downtown Plan and the Redevelopment Plan or has environmental impacts that were not considered in the EIR, then additional environmental review including preparation of an initial study could be required under CEQA.

Findings: Based on the above, the City Council finds and determines that the changes to the Downtown Plan and zoning amendments are separate and distinct from the Plan Amendment and that the EIR adequately addressed the environmental effects of the Plan Amendment. On this basis and to the extent the above comment is an objection to Plan Amendment, the City Council respectfully overrules the above objection.

### **Comment 3.19**

Comment: In this comment, SV/PEN objects to the alleged lack of owner participation in redevelopment and requests notice regarding the Redevelopment Plan.

Response: At the time the September 22, 2003 letter was written, the Agency had not initiated an owner participation process for the Town Center properties. As noted in the Response to Comment 3.6 above, the Agency has now initiated that process and SV/PEN and other Town Center property owners have an opportunity to submit proposals for redevelopment of the Town Center parcels. In addition, the Agency has provided SV/PEN will all required legal notices relating to the Plan Amendment as described in the Report and as evidenced by the numerous letters written on behalf of SV/PEN by its counsel objecting to the Plan Amendment and by the appearance by counsel and principals of SV/PEN at the Planning Commission, Agency and City meetings at which the Plan Amendment was considered.

Findings: Based on the above, the City Council finds and determines that SV/PEN has been included in the owner participation process for the Town Center property and has received all legally required notices regarding the Plan Amendment. On this basis and to the extent the above comment is an objection to Plan Amendment, the City Council respectfully overrules the above objection.

### **Comment 3.20**

Comment: The comment raises questions about the consistency of any proposed changes to the Redevelopment Plan with the General Plan.

Response: As the Report and the text of the Plan Amendment plainly indicate, one of the purposes of the Amendment is to assure consistency between the Redevelopment Plan and the General Plan and Downtown Specific Plan. In addition, the Planning Commission resolution, adopted on November 24, 2003, specifically found that the Plan Amendment is consistent with the General Plan.

Findings: Based on the above, the City Council finds and determines that the Plan Amendment is consistent with the General Plan. On this basis and to the extent the above comment is an objection to Plan Amendment, the City Council respectfully overrules the above objection.

### **Comment 3.21**

Comment: This comment summarizes SV/PEN's requests to postpone the actions on the General Plan Actions.

Response: As noted above the downtown specific plan and zoning regulations were adopted but no action was or has been taken on the General Plan amendments that had been requested by Forum Development and Lehman ALI. Neither of these actions is related to adoption of the Plan Amendment.

Findings: Based on the above, the City Council finds and determines that the General Plan Actions are separate and distinct from the Plan Amendment. On this basis and to the extent the above comment is an objection to Plan Amendment, the City Council respectfully overrules the above objection.

### **Comment 3.22**

Comment: This comment was written in connection with the General Plan Actions. In particular, this letter addresses alleged infirmities leading to the Planning Commission's consideration of the downtown specific plan and zoning regulations amendments to implement the General Plan changes that were adopted in June 2003.

Response: As noted above, those changes have already been adopted by the City and SV/PEN's objections are not generally relevant to adoption of the Plan Amendment. The objections that SV/PEN makes to these actions are repetitive of Comments 3.14 through 3.21 above. The Responses to Comments 3.14 through 3.21 are hereby incorporated into this Response.

Findings: Based on the above, the City Council finds and determines that the General Plan Actions are separate and distinct from the Plan Amendment. On this basis and to the extent the above comment is an objection to Plan Amendment, the City Council respectfully overrules the above objection.

### **Comment 3.23**

Comment: The commenter objects to the downtown specific plan amendments to the extent they would permit the reestablishment of McKinley Street from Mathilda to Sunnyvale.

Response: The basis for the objection is the claim that previous planning had not contemplated reestablishment of McKinley the entire distance from Mathilda to Sunnyvale. SV/PEN's concern about this possibility is that the reestablishment of that entire length of street could require acquisition and demolition of the building that SV/PEN owns in the Town Center.

However, the recent planning for the Town Center area (which began in July of 2001 with City Council appointment of a downtown advisory committee) has always contemplated reestablishment of the street grid without specifying specifically which streets, lengths of streets or street routes would be reestablished. Thus, the General Plan amendments adopted in June of 2003 contemplate reestablishment of the grid but do not specify the length or exact location of each street. Forum Development and Lehman presented one plan that did contemplate rebuilding McKinley from Sunnyvale to Mathilda but the City has not granted any approvals for implementation of a precise plan that would rebuild the entire length of McKinley. The final street pattern will ultimately depend on which plan the City approves for development of the Town Center properties as part of the special development permit process that will be required for any new development on those properties. As noted above, the City has already adopted the downtown specific plan amendments to which SV/PEN objects in this part of the letter.

Findings: Based on the above, the City Council finds and determines that the no formal action has been made on the reestablishment of McKinley the entire distance from Mathilda to Sunnyvale and the actions to make any such change are separate and distinct from the Plan Amendment. On this basis and to the extent the above comment is an objection to Plan Amendment, the City Council respectfully overrules the above objection.

#### **Comment 3.24**

Comment: The commenter objects to the downtown specific plan amendments on the grounds that the reestablishment of the street grid was not considered in the EIR.

Response: First, this comment is irrelevant to the Plan Amendment as it concerns the CEQA process for the then- proposed changes to the downtown specific plan which have been adopted since this comment was made. However, to the extent the comment address the CEQA process for the Plan Amendment, the City responds that the EIR specifically mentions amendment of the Plan as part the project analyzed in the EIR, and addressed cumulatively impacts in its analysis. The scope of and nature of development in the Project Area contemplated by the Redevelopment Plan as amended by the Plan Amendment is the same as is contemplated by the Downtown Plan, as is best shown by the fact that the Plan Amendment adopts the Downtown Plan as the land use controls applicable to the Project Area. Consequently, reliance on the EIR for the Downtown Plan is proper. To the extent that SV/PEN or anyone else in the Project Area applies for development that goes beyond the scope of what is contemplated by the Downtown Plan and the Redevelopment Plan or has environmental impacts that were not considered in the EIR, then additional environmental review including preparation of an initial study could be required under CEQA.

Findings: Based on the above, the City Council finds and determines that the changes to the downtown specific plan are separate and distinct from the Plan Amendment and that the EIR adequately addressed the environmental effects of the Plan Amendment. On this basis and to the extent the above comment is an objection to Plan Amendment, the City Council respectfully overrules the above objection.

### **Comment 3.25**

Comment: The commenter requests that it be involved in any discussions of potential changes to the parking and access to the Town Center properties.

Response: The City and the Redevelopment Agency have held numerous public meetings and meetings of Town Center owners concerning various issues concerning the properties. Representatives of SV/PEN have attended many of those meetings and have been involved in the process for Town Center since the outset of their involvement with the center in 2002 when they proposed their own plan for redevelopment of the Town Center.

Findings: Based on the above, the City Council finds and determines that the SV/PEN has been include in discussion of any changes to the Town Center. On this basis and to the extent the above comment is an objection to Plan Amendment, the City Council respectfully overrules the above objection.

### **Comment 3.26**

Comment: The commenter objects to adequacy of the traffic analysis in the EIR for consideration of any plans or approvals that involve reestablishment of the street grid.

Response: First, this comment is irrelevant to the Plan Amendment as it concerns the CEQA process for the proposed changes to the Downtown Specific Plan which have been adopted since this comment was made. However, to the extent the comment address the CEQA process for the Plan Amendment, the City responds that the Transportation Impact Analysis (TIA) Study prepared for the Downtown Sunnyvale Improvement Program considered trip generation and trip distribution from forecast land uses within Block 18 and comprehensively evaluated all eleven of the signalized public street intersections adjacent to and serving Block 18. The TIA methodology is consistent with Santa Clara Valley Transportation Authority Congestion Management Program guidance for preparation of a TIA, including distribution of trips to the adjacent public street system and analysis of site circulation, and exceeds the intersection level of service scooping requirements. Intersection levels of service for those intersections directly serving Block 18 ranged from LOS B to D, indicating roadway capacity sufficient for the planned land use intensities. Should a specific land use proposal use proposal be submitted with a new on-site circulation system, the City would evaluate the proposal at that time to determine if the proposal significantly changes the expected on-site circulation pattern and corresponding expected distribution of trips to the public street system.

Findings: Based on the above, the City Council finds and determines that the changes to the downtown specific plan are separate and distinct from the Plan Amendment and that the EIR adequately addressed the environmental effects of the Plan Amendment. On this basis and to the extent the above comment is an objection to Plan Amendment, the City Council respectfully overrules the above objection.

### **Comment 3.27**

Comment: The commenter raises concerns about the application of design guidelines of the downtown specific plan to existing buildings including the building SV/PEN owns.

Response: The City notes this comment is irrelevant to the Plan Amendment as it concerns application of design guidelines not the Plan Amendment. But to address the concern raised by the commenter, in the application of any of the design guidelines, the City would expect to work with the affected property owner or owners to implement the guidelines for the property or property in question. SV/PEN, however, offers no reason why its property should not be subject to design guidelines that will apply to all properties covered by the downtown specific plan.

Findings: Based on the above, the City Council finds and determines that the concern regarding design guidelines does not related to the Plan Amendment, and, moreover, that the City would apply design guidelines in a fair and equitable fashion. On this basis and to the extent the above comment is an objection to Plan Amendment, the City Council respectfully overrules the above objection.

### **Comment 3.28**

Comment: The commenter requests the following for the downtown specific plan: elimination of any reference to the potential for reestablishment of McKinley from Mathilda to Sunnyvale, a more detailed traffic study and more detailed design guidelines for existing buildings.

Response: This request is noted. As discussed above, those downtown specific plan amendments have already been adopted by the City and are irrelevant to the adoption of the Plan Amendment.

Findings: Based on the above, the City Council finds and determines that the concerns regarding the specific plan do not directly relate to the Plan Amendment, and moreover that the City has already adopted the downtown specific plan amendments. On this basis and to the extent the above comment is an objection to Plan Amendment, the City Council respectfully overrules the above objection.



APPENDIX 1

LETTERS OF COMMENT

LETTER #1

## Brice McQueen - Vote NO on eminent domain

---

**From:** Chris Carpenter <ccarpent@cisco.com>  
**To:** <council@ci.sunnyvale.ca.us>  
**Date:** 12/16/03 7:54 AM  
**Subject:** Vote NO on eminent domain

---

Eminent domain only works as a bargaining tool if you're ready and willing  
to use implement it. Vote NO. ] 1.1

=====  
Chris Carpenter  
Phone: 408 525-0863  
Cisco Systems  
RTG SPA Hardware Engineering  
SJC16/3/3  
3700 Cisco Way  
San Jose, CA, 95134

**Brice McQueen - Eminent Domain**

---

**From:** <Mugs2115@aol.com>  
**To:** <council@ci.sunnyvale.ca.us>  
**Date:** 12/16/03 11:49 AM  
**Subject:** Eminent Domain

---

I will not be able to attend tonight's Council Meeting. However, I am writing on behalf of the members of our Lowlanders Homeowners Association. I understand that last month you put an item on the agenda to reinstate Eminent Domain for Business properties in the downtown area. PLEASE DO NOT approve this! Eminent Domain is an extremely BAD idea and has no place in our City. No one should have to give up their home so a developer can steal their property for their own use.

2.1

Margaret Murguia  
Sunnyvale



Jeffer Mangels  
Butler & Marmaro LLP

LETTER #3

David R. Daniels  
Direct: (310) 201-3518  
DDaniels@jmbm.com

1900 Avenue of the Stars, 7th Floor  
Los Angeles, California 90067-4308  
(310) 203-8080 (310) 203-0567 Fax  
www.jmbm.com

Ref:  
64311-0002

December 16, 2003

Via Electronic Mail (bmcqueen@ci.sunnyvale.ca.us),  
and U.S. Mail

Mayor John Howe and  
Members of the City Council and Members of the Redevelopment Agency  
of the City of Sunnyvale  
City Hall  
456 West Olive Avenue  
Sunnyvale, California 94088

**Re: Proposed Fourth Amendment to the Central Core  
Redevelopment Plan (RDA 03-015)  
Proposed Ordinance Adopting the Fourth Amendment  
(RTC 03-443)  
Amendment to the Municipal Code ("Signature Requirement")  
(RTC 03-441)  
City Council Hearing Date: December 16, 2003**

Dear Mayor Howe and Honorable Members of the City Council:

This office represents Harvest SV/PEN, Ltd. ("SV/PEN"). SV/PEN owns the former JC Penney building located in the Town Center Mall, and will thus be affected by the above-referenced proposed actions ("Proposed Actions") presently before the Redevelopment Agency and the City Council.

SV/PEN objects to these Proposed Actions on numerous grounds, as outlined in our November 24, 2003 letter to the City of Sunnyvale ("City") Planning Commission, a copy of which is attached as Exhibit "A." Also attached, as Exhibits "B" and "C," are copies of our letters to the City dated October 6, 2003 and September 22, 2003, respectively. SV/PEN reasserts the objections raised in these letters, and respectfully submits them for consideration by the City Council. We ask that a copy of this package be distributed to each member of the City Council prior to the hearing.

Mayor John Howe and  
Members of the City Council and Members of the Redevelopment Agency  
of the City of Sunnyvale  
December 16, 2003  
Page 2

It appears that the City and Redevelopment Agency may be moving toward recognition of the rights of affected property owners and greater inclusion of SV/PEN and others in its plans. Nevertheless, the Proposed Actions remain flawed, and SV/PEN objects on the following grounds, and also as described in the attached letters to the City.

- The Proposed Actions violate the Construction , Operation and Reciprocal Easement Agreement ("COREA") that governs development at the Town Center Mall. Among other things, the Proposed Actions do not have the written consent of the parties to the COREA. 3.1
- The Proposed Actions violate the California Environmental Quality Act ("CEQA"). Among other things, the current environmental review improperly relies on a previous Program EIR that did not adequately contemplate the Proposed Actions. Moreover, CEQA requires analysis of a project as a whole. Here, the City is clearly taking one small step at a time (e.g. the Proposed Actions) and is evading a comprehensive environmental analysis that also includes each of these steps. 3.2
- The Signature Requirement amendment to the Municipal Code unconstitutionally affects individual property rights. 3.3


In addition, the Proposed Actions violate the Community Redevelopment Law. (See Cal. Health & Safety Code § 33000 et seq.) Among other things, the law provides that in the case of a proposed amendment that "lengthen[s] the period during which the redevelopment plan is effective,...the agency shall follow the same procedure, and the legislative body is subject to the same restrictions as provided for in this article for the adoption of a plan." (Cal. Health & Safety Code § 33354.6.) The proposed amendment extends the Redevelopment Agency's power of eminent domain for a period of twelve years. This is a significant lengthening of the Plan's effectiveness. Yet the City fails to follow required procedures, including providing the Environmental Impact Report required by law. (Cal. Health & Safety Code § 33352(k).) 3.4

SV/PEN respectfully requests that the City Council reject the Proposed Actions. Please be advised that SV/PEN does not waive and expressly reserves all of its rights and remedies to challenge the City's and Redevelopment Agency's decisions.

Mayor John Howe and  
Members of the City Council and Members of the Redevelopment Agency  
of the City of Sunnyvale  
December 16, 2003  
Page 3

Please contact the undersigned if you have any questions or if you require clarification of any of the matters raised herein.

Sincerely,



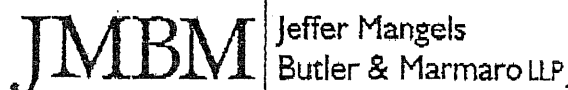
DAVID R. DANIELS for  
Jeffer, Mangels, Butler & Marmaro LLP

DRD:kc1

Attachments: Exhibit A – November 24, 2003 JMBM letter to the City of Sunnyvale Planning Commission  
Exhibit B – October 6, 2003 JMBM letter to the City of Sunnyvale Planning Commission  
Exhibit C – September 22, 2003 JMBM letter to the City of Sunnyvale Planning Commission

cc: Robert LaSala, City Manager  
Bob Paternoster, Director of Community Development  
Trudi Ryan, Community Development Department Liaison  
Valerie Armento, City Attorney  
Brice McQueen, Redevelopment Manager

# **EXHIBIT A**



David R. Daniels  
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Los Angeles, California 90067-4308  
(310) 203-8080 (310) 203-0567 Fax  
www.jmbm.com

Ref:  
64311-0001

November 24, 2003

Via Electronic Mail (tryan@ci.sunnyvale.ca.us).  
Facsimile (408) 328-0710 and U.S. Mail

Chair Laura Babcock and Members of the Planning Commission  
of the City of Sunnyvale  
City Hall  
456 West Olive Avenue  
Sunnyvale, California 94088

Re: **Proposed Eminent Domain Amendment to the Central Core  
Redevelopment Plan (the "proposed amendment")  
Proposed Resolution of the Redevelopment Agency Designating a  
Master Development Area (the "proposed resolution")  
Proposed Amendment to Municipal Code Section 19.98.020  
(the "proposed ordinance")  
Planning Commission Meeting: November 24, 2003**

Dear Chair Babcock and Honorable Members of the Planning Commission:

This office represents Harvest SV/PEN, Ltd. ("SV/PEN"). SV/PEN owns the property located at 2510 Towncenter Drive in Sunnyvale, California (which includes the former JC Penney building). The above-referenced proposals (collectively, the "proposed actions") presently before the City of Sunnyvale ("City") Planning Commission directly affect SV/PEN and its interests.

SV/PEN: (1) requests that the Planning Commission continue its consideration of these matters; (2) objects to the proposed actions; and (3) requests that the Planning Commission recommend that the City Council *not* adopt the proposed actions, for the reasons set forth below.

I. The City's Notice Regarding the Proposed Redevelopment Plan Amendments Fails to Provide Sufficient Information To Ensure Informed Participation in The Redevelopment Process.

The notices that SV/PEN has received or reviewed in connection with this hearing before the Planning Commission state in essence that the Planning Commission is being asked to



Chair Laura Babcock and Members of the Planning Commission  
of the City of Sunnyvale  
November 24, 2003  
Page 2

recommend a series of amendments to the Redevelopment Plan for the Central Core Redevelopment Project (the "Redevelopment Plan"). However, none of the notices that SV/PEN has received or reviewed describe the proposed amendments in a manner that adequately informs either SV/PEN or the public regarding the substance of the amendments. In particular, the notices state in general terms that the proposed amendments, in addition to extending the eminent domain authority of the Redevelopment Agency, will "conform Redevelopment Plan land uses to [the] recently amended General Plan and Downtown Specific Plan [sic]." Nowhere, however, in the notices, is it stated what the nature of the "land use" changes to the Redevelopment Plan will be, i.e. what portions of the land use descriptions in the current Redevelopment Plan are being eliminated, modified or expanded.

When reviewing the staff report for this item on the agenda, Attachment 2 to that report appears to set forth the text of the proposed amendment. Although the title of the Attachment and the heading for Section II(B) of the Attachment would suggest that the scope of the Amendment is limited to "Eminent Domain" authority and "Permitted Land Uses," the actual text of the Amendment addresses such subjects as street widening and configurations (Attachment 2, at Section II (C)) and the Authority of the Agency to establish specific guidelines or standards for building heights and traffic circulation in the Redevelopment Plan area (Section II(E).) Such amendments clearly go beyond extending the eminent domain powers of the Agency and/or conforming the list of permissible land uses set forth in the Redevelopment Plan to those set forth in the General Plan and the Downtown Specific Plan.

3.5

As more fully discussed below, the lack of clarity in the notice regarding the specifics of the proposed amendments to the Redevelopment Plan is particularly troubling to SV/PEN, as SV/PEN is an owner of property in the project area and, as such, is entitled under the provisions of the California Redevelopment Law (in addition to provisions of certain operating agreements governing the Sunnyvale Town Center within the project area) to meaningfully participate in the redevelopment of its property. (Health & Safety Code Section 33339.) In order to comply with the Redevelopment Law and due process and to properly afford SV/PEN the time necessary to analyze and consider the substance of the proposed amendments, SV/PEN requests that this matter be continued.

II. By Excluding SV/PEN and Other Owners from The Proposed Plan Amendment Process, The Agency Is Violating the Provisions of the Community Redevelopment Law As Well As Certain Agreements Governing Development of the Project Area, Including, Without Limitation, The Construction, Operation and Reciprocal Easement Agreement ("COREA") That Governs Development At the Sunnyvale Town Center Mall.

As stated, the California Redevelopment Law clearly envisions that owners of property within the project area affected by a redevelopment plan shall be permitted to participate in the

3.6

Chair Laura Babcock and Members of the Planning Commission  
of the City of Sunnyvale  
November 24, 2003  
Page 3

redevelopment of their property (Health & Safety Code Section 33339). Indeed the applicable redevelopment plan must, by law, afford such property owners this right. (*Id.*) 3.6

Similarly, Section XXIX-I of the COREA that governs the development, operation and maintenance of the Sunnyvale Town Center Mall within the redevelopment plan area requires that any amendment affecting the Center's original Redevelopment Plan, or the redevelopment plan contemplated by the Special Development Permit and Tentative Map obtained for the Mall site, be subject to the prior written consent of each of the parties to the COREA. 3.7  
Notwithstanding these requirements, the City and the Agency appear to be locked on a course of approving amendments to the Redevelopment Plan that are beyond the scope of the Mall's original Redevelopment Plan, Special Development Permit and Tract Map without prior written consent from each of the Mall's property owners.

SV/PEN again requests that the proposed amendments to the Redevelopment Plan be continued and/or tabled in order to afford SV/PEN, as well as other parties to the COREA, their right to participate.

III. Adoption of The Proposed Redevelopment Plan Amendment Would Violate the California Environmental Quality Act.

The proposed amendments to the Redevelopment Plan are clearly designed to further the City's desire to dramatically overhaul Block 18 in the Downtown Specific Plan area, which, according to the newly adopted Downtown Specific Plan, could include, amongst other things, "re-establishing" the street grid in the downtown area and possibly extending certain streets through the existing Town Center Mall. As previously set forth in a letter from our office to the City dated September 22, 2003, a copy of which is attached hereto, notwithstanding the fact that such specific amendments to the Downtown Specific Plan area are being contemplated, the City and its Redevelopment Agency continue to rely upon the Program EIR that was developed for the Sunnyvale Downtown Improvement Program Update, which document did not address the specific and more dramatic changes now contemplated for the Town Center Mall. As stated in the September 22, 2003 letter, reliance upon the Program EIR, rather than conducting additional environmental analyses that consider the more specific amendments now envisioned for the Town Center Mall, is improper under CEQA. 3.8

The City and the Redevelopment Agency in approving any amendments to the Redevelopment Plan (and/or, as further discussed below, in approving any ordinance amendments that may enable any development in the Redevelopment Plan area) must conduct an Initial Study ("IS") to determine whether such proposed actions would cause any significant impacts not analyzed in the Program EIR. (See Public Resources Code, Section 21094(c); see also Cal. Code Regulations, Title 14, Sections 15152(f), 15063(b)(1)C, (c)(3)(D).) The City sidestepped this requirement in connection with the Downtown Specific Plan Amendments, and

Chair Laura Babcock and Members of the Planning Commission  
of the City of Sunnyvale  
November 24, 2003  
Page 4

now appears set on perpetuating this same avoidance practice by approving proposed Redevelopment Plan amendments and Municipal Code changes that are designed to foster the more dramatic redevelopment in the Town Center Mall without analyzing the full breadth of possible environmental impacts associated with such potential redevelopment.

3.8

The definition of "project" is broad under CEQA in order to maximize the protection of the environment. Thus, CEQA requires that environmental considerations not be hidden by separately focusing on isolated parts (e.g., a generalized amendment to a redevelopment plan to expand the powers of eminent domain, or the adoption of an ordinance to allow for the processing of a development application without all property owner signatures), while overlooking the cumulative effect of the whole action (e.g. the ultimate dramatic reconstruction of the Town Center Mall and the surrounding area). (See *City of Sacramento v. State Water Resources Control Bd.*, (1992) 2 CA4th 960, 3 CR2d 643).

3.9

Neither the City nor the Redevelopment Agency may divide the proposed redevelopment of the Town Center Mall into smaller individual components simply to avoid the responsibility for considering the environmental impacts of the project as a whole. Thus, the City and the Redevelopment Agency must refrain from considering the proposed Redevelopment Plan Amendments unless and until the requisite Initial Study is prepared and the more comprehensive environmental analysis of all of the possible environmental impacts associated with the potentially dramatic Town Center Mall redevelopment project are studied.<sup>1</sup>

#### IV. The Proposed Ordinance is Unconstitutional.

The City's proposed ordinance allowing the processing and approval of applications absent the signatures of all owners raises serious constitutional concerns. The proposed ordinance will significantly affect individual property rights, including those of SV/PEN, by allowing potentially monumental development entitlements to be processed without the consent of the affected property owner.

The proposed ordinance reassures that "any approvals granted in such a situation shall not be exercised until...[the] concurrence of all owners...." is obtained. However, the existence of such an approval, even though executory in nature, could have serious economic consequences for a property owner.

3.10

For example, a City approval, regardless of the permittee's inability to act on it, remains a fact that may negatively impact the affected property's value, as well as the affected property owner's ability to obtain financing. Such an approval may also impact the commercial

<sup>1</sup> Note: Inasmuch as the proposed Redevelopment Plan amendment lengthens the period during which the redevelopment plan is effective, which in this case it does via the extension of eminent domain powers, additional CEQA review must occur. (See Cal. Health and Safety Code Section 33352 (k).)

Chair Laura Babcock and Members of the Planning Commission  
of the City of Sunnyvale  
November 24, 2003  
Page 5

attractiveness of the property and the owner's ability to secure tenants. In effect, the proposed ordinance empowers a permit applicant to unilaterally chart the future course of the property of his or her neighbor without any meaningful due process or compensation for that neighbor.

3.10

V. The Proposed Ordinance if adopted would also violate CEQA.

For the reasons discussed in section III of this letter, any proposed adoption of the ordinance at this juncture would also violate CEQA. The ordinance, as previously discussed, is part of the City's plan to substantially redevelop the Town Center Mall. To the extent a property owner within that project area is questioning the City's or Redevelopment Agency's proposed course of action and is unwilling to consent to a particular redevelopment project, the City intends to rely upon the proposed ordinance to process the development project application without the owner's approval. Thus, the ordinance is part of the City's and Agency's broader plan to substantially alter the Town Center Mall's design. For CEQA purposes the City must, therefore, treat this proposed ordinance as part of the greater redevelopment plan for the Town Center Mall and must do the previously discussed initial study and environmental analysis to assess the potential environmental impacts of a substantially altered Mall site. To ensure that the whole of the City's and Redevelopment Agency's proposed action is considered, the City cannot rely upon the Section 15061(b)(3) "common sense" exemption under CEQA in considering this ordinance. Actual environmental review is required.

3.11

VI. The Proposed Ordinance If Adopted Violates The Participation Requirements of the Redevelopment Law and The COREA.

As previously discussed, pursuant to the California Redevelopment Law, property owners in the redevelopment plan area, and, in this case, in the Town Center Mall site, must be permitted to participate in their property's redevelopment. (Cal. Health & Safety Code Section 33339.) Additionally, as previously discussed, the COREA that governs the Town Center Mall site requires active participation and property owner consent for any amendments to the Center's redevelopment plan. The proposed ordinance attempts to usurp these powers from the property owner, by subjecting the property owner's property to a potentially monumental entitlement process without permitting the property owner to control or decide the direction of the redevelopment until after the development permit has been granted. Elimination of the property owner from early participation is contrary to both the letter and the spirit of the Redevelopment Law and the COREA and should not be supported through adoption of the proposed ordinance.

3.12

Chair Laura Babcock and Members of the Planning Commission  
of the City of Sunnyvale  
November 24, 2003  
Page 6

VII. Conclusion.

For the foregoing reasons, SV/PEN respectfully requests that the Planning Commission take or continue its consideration of the Redevelopment Plan amendments in order to afford SV/PEN the opportunity to meaningfully participate in the redevelopment process as required by the Redevelopment Law, CEQA and the COREA.

3.13

Sincerely,

*David R. Daniels* (LP)

DAVID R. DANIELS for  
Jeffer, Mangels, Butler & Marmaro LLP

DRD/kcl

cc: Robert LaSala, City Manager  
Bob Paternoster, Director of Community Development  
Trudi Ryan, Planning Officer  
Valerie Armento, City Attorney

# **EXHIBIT C**

**JEFFER, MANGELS, BUTLER & MARMARO LLP**

A LIMITED LIABILITY PARTNERSHIP INCLUDING PROFESSIONAL CORPORATIONS

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64311-0002

September 22, 2003

**Via Facsimile and U.S. Mail**Robert LaSala  
City Manager  
City of Sunnyvale  
City Hall  
P.O. Box 3707  
Sunnyvale, CA 94088-3707Valerie Armentò  
City Attorney  
City of Sunnyvale  
P.O. Box 3707  
Sunnyvale, CA 94088-3707Bob Paternoster  
Director of Community Development  
City of Sunnyvale  
P.O. Box 3707  
Sunnyvale, CA 94088-3707Trudi Ryan  
Planning Officer  
City of Sunnyvale Planning Department  
P.O. Box 3707  
Sunnyvale, CA 94088-3707

Re: Forum Development Group, LLC/Lehman Brothers Application for a General Plan Amendment (2003-0613) and Proposed Amendments to Downtown Specific Plan and Zoning Code (2001-0612)

Dear Ladies and Gentlemen:

On behalf of our client, Harvest SV/PEN, Ltd. ("SV/PEN"), we respectfully submit the following comments relating to two matters on the City of Sunnyvale's Planning Commission ("Planning Commission") agenda for today, September 22, 2003:

- (1) No. 2003-0613, an application by Forum Development Group, LLC/Lehman Brothers ("Forum") for a General Plan Amendment ("GPA") to increase the

3.14

**JEFFER, MANGELS, BUTLER & MARMARO LLP**

September 22, 2003

Page 2

maximum development intensity and to increase the general office square footage permitted within Block 18 ("Forum's Application")<sup>1</sup>; and

- (2) No. 2001-0612, proposed amendments to the Downtown Specific Plan and Zoning Code drafted to address changes to the General Plan made by the City Council in June 2003 ("Specific Plan Amendments").

We request that these comments be included in the administrative record for Forum's Application. We also request that copies of this letter and exhibits be distributed to each member of the Planning Commission upon receipt.

SV/PEN is owner of the former J.C. Penney building located in the Town Center Mall, a building which may be affected by both Forum's Application as well as the Specific Plan Amendments. As such, SV/PEN is an affected property owner deserving of full and adequate notice, as well as a meaningful opportunity to voice its concerns over Forum's Application as well as the Specific Plan Amendments.

3.14

SV/PEN is concerned by the apparent "fast-track" process the City is employing relating to both the Forum Application and the Specific Plan Amendments, particularly given that SV/PEN believes there are significant procedural and substantive deficiencies relating to both the Forum Application and Specific Plan Amendments. For this reason, SV/PEN respectfully requests that the Planning Commission postpone further review of these matters until the public, including SV/PEN, has had an opportunity to review the proposed actions in full and to provide detailed comments thereon to the Planning Commission.

The following details SV/PEN's comments and concerns at this time.

**I. Procedural Deficiencies**

**A. The City of Sunnyvale Has Failed to Provide SV/PEN with Adequate Notice**

The City has failed to provide SV/PEN with the required notice of the pending Forum Application as well as the Specific Plan Amendments. Under California Government Code § 65091(a)(1), the Planning Commission was required to provide notice to SV/PEN at least 10 days prior to the hearing of these proposed actions. However, as of September 18, 2003,

3.15

<sup>1</sup> SV/PEN is also troubled by Forum's application for a Special Development Permit ("SDP") for the redevelopment of a portion of Block 18 that includes the Town Center Mall. Though not on the Planning Commission's agenda for the public hearing on September 22, 2003, the public notice identifies a Study Session regarding Forum's SDP application on September 22, 2003. SV/PEN is also informed that a similar Study Session will be conducted on September 23, 2003 prior to the City Council session. SV/PEN believes it is inappropriate for the Planning Commission to analyze Forum's application for a SDP at this time given the concerns expressed in this letter regarding both Forum's Application and the Specific Plan Amendments, and thus urges the Planning Commission to postpone further analysis of Forum's SDP application until the matters raised herein are resolved.



**JEFFER, MANGELS, BUTLER & MARMARO LLP**

September 22, 2003

Page 3

SV/PEN had not been formally notified of the September 22, 2003 public hearing. This is especially troubling given that, on August 21, 2003, SV/PEN transmitted a letter to the Planning Commission requesting to be notified of any proposed actions. However, no notice was received from the Planning Commission in response to this request.

In fact, on September 18, 2003, SV/PEN was forced to send an e-mail to Robert Paternoster, Director of Community Development, protesting the continued lack of notice relating to Forum's application. On September 19, 2003, Mr. Paternoster sent a letter in response indicating that the City's notification process "is dependent upon the records of the County Assessor, which records still show J.C. Penney as the owner of the property." However, on August 29, 2003, three weeks prior to that letter, Kelly Diekmann, an Associate Planner for the City, had sent a letter to Forum stating that Forum's Application was incomplete, based in part on the fact that "[s]ignatures of the remaining affected property owners within the subject area" including "JC Penney--Harvest SV/PEN LTD" were missing from Forum's Application. (Emphasis added). [A copy of the City's August 29, 2003 letter informing Forum of deficiencies in its application is attached hereto as Exhibit 1.] The City was thus on record as being aware, at least as of August 29th, that SV/PEN was a property owner impacted by the Forum's Application.

3.15

SV/PEN is therefore concerned that the Planning Commission, and the City in general, has repeatedly, and perhaps deliberately, deprived SV/PEN of reasonable notice and other due process rights. Procedural due process requires, at a minimum, that notice must be reasonably calculated to afford affected parties a realistic opportunity to protect their interests. See Horn v. County of Ventura (1979) 24 Cal.3d 605. Given that the City was aware, at least as early as August 29th, that SV/PEN was an owner of real property within the subject area of Forum's Application as well as the Specific Plan Amendment, the City appears to have engaged in a course of conduct designed, whether intentionally or not, to deprive SV/PEN of its right to full and adequate notice under the law, and the ability to meaningfully participate in this process.

**B. The City has Failed to Provide Public Records in a Timely Fashion Prior to the September 22, 2003 Public Hearing**

SV/PEN is further concerned that it has been unable to assess in full the proposed scope of and possible impacts associated with Forum's Application and the Specific Plan Amendments. On September 19, 2003, Counsel for SV/PEN inspected public documents relating to Block 18, but there was a paucity of documents available in the one file made available. When SV/PEN's counsel requested to have the public documents in this file copied, a Planning Department staffperson indicated that a handwritten request should be submitted, and that the earliest that the copied documents would be available would likely be Tuesday, September 23, 2003, the day after the September 22nd public hearing. [A copy of the undersigned's hand-written request to have public documents copied is attached hereto as Exhibit 2.] SV/PEN has thus been unable to review adequately all available public records relating to the Forum Application and Specific Plan Amendments scheduled for the September 22, 2003 public hearing.

3.16

**JEFFER, MANGELS, BUTLER & MARMARO LLP**

September 22, 2003

Page 4

Moreover, the Planning Department did not publish the Staff Reports for the Forum Application and Specific Plan Amendments until Sunday, September 21, a non-workday, and only one day prior to the public hearing. According to the public notice of the upcoming Planning Commission public hearing on September 22, a Staff Report was scheduled to be made available on the City's website on Friday, September 19, 2003 for the Forum Application. Additionally, a Planning Department staff person indicated that the Staff Report might not be available by 5:00 p.m. on September 19, 2003, but that it would definitely be available sometime later that evening. (Pers. Comm., K. Diekmann, September 19, 2003). However, no Staff Report was made available until Sunday morning, September 21.

SV/PEN's counsel received e-mail correspondence from the Planning Department on September 20, 2003 that stated that an electronic copy of the Staff Report was attached, but the e-mail only included a link to the Planning Commission's Agendas, Reports and Minutes, which only contained Staff Reports for two other projects apparently slated for the September 22, 2003 public hearing, Report Numbers 03-0493 and 03-0537. Counsel for SV/PEN sent a response e-mail requesting clarification. [A copy of a September 20, 2003 e-mail from Kelly Diekmann to the undersigned, and the undersigned's response e-mail to Mr. Diekmann is attached hereto as Exhibit 3.]

3.16

Thus, even though SV/PEN's counsel made diligent inquiries and attempts to obtain any relevant information from the Planning Department regarding the Forum Application and Specific Plan Amendments, such information was only made available on the City's website as of Sunday morning, September 21. SV/PEN has thus had less than one full day to review this information and to provide comments thereon. This is insufficient time to assess the contents of the Staff Reports as well as exhibits attached thereto, and to assess potential concerns SV/PEN might have regarding these documents and the proposed actions. Accordingly, SV/PEN has been deprived of a meaningful opportunity to comment on these documents, and therefore respectfully requests that the Planning Commission continue the public hearings on the Forum Application and Specific Plan Amendments for at least several weeks to allow SV/PEN, as well as other potentially affected parties and the general public, adequate time to review these documents and the actions proposed therein.

**C. No Action Should be Taken on the Forum Application Because it is Grossly Inadequate**

Irrespective of the inadequate notice to SV/PEN of the Forum Application, the City should defer any action on the application, including the proposed vote by the Planning Commission on Monday, September 22 relating to the proposed GPA, because Forum's Application is grossly inadequate. Though the City appears intent on fast-tracking Forum's Application through the approval process, the fact is that the City itself has already indicated to Forum that its application fails to include many of the basic requirements identified by the City itself as necessary to be deemed complete.

3.17

**JEFFER, MANGELS, BUTLER & MARMARO LLP**

September 22, 2003

Page 5

In an August 29, 2003 letter, the Planning Department informed Forum of the significant inadequacies in Forum's application, including the following:

1. Failure to obtain signatures of affected property owners
2. Failure to provide an indemnification agreement to the city
3. Failure to complete an Impervious Surface Data sheet
4. Failure to complete an Environmental Information Form
5. Failure to complete a Parking circulation Study

(See Exhibit 1, August 29, 2003 letter from Kelly Diekmann to Forum.) During its review of the Planning Department's files on September 19, 2003, counsel for SV/PEN could not locate any of the documents identified by the Planning Commission as lacking from Forum's Application. Thus, unless the Planning Department had these documents, but simply failed to make them available to SV/PEN<sup>2</sup>, Forum's Application is deficient and no further City action should be taken relating to the application until all requisite documents and information have been submitted to the Planning Commission and made publicly available.

Such a result is clearly proper in this case. Notwithstanding the possibility that some of the information required for a complete application may exist (even though it was not made available to SV/PEN), SV/PEN is certain that its own signature, as an affected property owner, has not been provided. On that basis alone, Forum's Application is incomplete. In fact, if the Planning Commission or City Council continues to process the Forum Application absent a complete application, and in light of the other concerns raised in this letter, SV/PEN can only conclude that the "fast-track" approach may be improperly infringing on not only SV/PEN's fundamental rights as an affected property owner, but also the rights of the general public relating to Block 18.

3.17

**D. Forum's Application to Amend the GPA is Inappropriate Given the Pending Amendments to the Downtown Specific Plan**

SV/PEN is concerned that the City is creating overlapping, duplicative, and ultimately contradictory review processes relating to the General Plan amendments adopted in June 2003 by the City Council, and the current application by Forum. On June 17, 2003, the City Council certified the Programmatic EIR, and adopted certain changes to the General Plan, including a unanimous decision to reduce the number of residential units in Block 18 to 200 from the 300 units proposed and recommended by Planning Department. Now, Forum has submitted an application for a GPA and a SDP to the City in which Forum is requesting 300 housing units, the very number unanimously rejected by City Council on June 17. Curiously, on August 12, 2003, City Council voted to completely change course and authorize the initiation of Forum's GPA.

<sup>2</sup> If the Planning Department did in fact fail to make such documents available to Harvest, we hereby object to such failure as violating Harvest's rights to access public records pursuant to the California Public Records Act, Gov't. Code §§ 6250 *et seq.*

**JEFFER, MANGELS, BUTLER & MARMARO LLP**

September 22, 2003

Page 6

Study to increase the housing units back to 300. SV/PEN is concerned about the shifting and uncertain nature of the City's actions relating to the General Plan, specifically as they relate to the Town Center Mall and Block 18. Coupled with the notice and due process issues raised above, SV/PEN is particularly concerned that the City's actions have deprived, and continue to deprive, SV/PEN of adequate notice and opportunities to be heard on these important issues.

**III. Deficiencies Related to the Requirements of the California Environmental Quality Act ("CEQA")****A. Forum's GPA Improperly Fails to Address Environmental Impacts Associated with the SDP**

SV/PEN is concerned that the City of Sunnyvale is putting Forum's Application on a "fast track" absent proper environmental review pursuant to CEQA. At this time, SV/PEN has had insufficient time to assess whether Forum's Application complies with the requirements of CEQA, particularly given that the relationship between the GPA and the SDP, the latter which is scheduled to be discussed in more detail during a Planning Commission study session on September 22, 2003, remains unclear at this time. However, SV/PEN hereby expresses concern over the propriety of the CEQA determinations in Forum's Application because the GPA concludes that it is within the scope of the Final Environmental Impact Report for the Downtown Improvement Program Update ("Programmatic EIR"), yet the GPA fails to address potential cumulative and related impacts associated with its proposed SDP.

3.17

Under CEQA, reasonably foreseeable impacts are required to be assessed where: (1) an expansion or future use is a "reasonably foreseeable consequence" of the initial project, and (2) the future expansion or action is "significant" in that it will likely change the scope of the initial project or its environmental effects. See Laurel Heights Improvement Ass'n of San Francisco, Inc. v. Regents of the University of California (1988) 47 Cal.3d 376, 393-399. In this case, there is no doubt that the GPA is just a preliminary step relating to Forum's SDP, yet no mention of the CEQA implications of the SDP is made in the GPA. SV/PEN believes this to be in violation of CEQA.

**B. The Specific Plan Amendments Fail to Provide Adequate CEQA Analysis**

The Specific Plan Amendments provide a short discussion of CEQA, stating that the City Council certified the Programmatic EIR on June 17, 2003, and that "[a]s part of that action, Council directed staff to update the Downtown Specific Plan and Zoning Code amendments to be consistent with the revised General Plan." (See Staff Report for Specific Plan Amendments, No. 2001-0612). The Staff Report thus seems to assume that the Specific Plan Amendments fall within the environmental analysis conducted in the Programmatic EIR.

3.18

Similarly, the Draft Downtown Specific Plan, Attachment A to the Staff Report for the Specific Plan Amendments (No. 2001-0612), states that:

**JEFFER, MANGELS, BUTLER & MARMARO LLP**

September 22, 2003

Page 7

"Pursuant to State and Local CEQA Guidelines, the City of Sunnyvale determined that the Specific Plan could result in significant environmental impacts and prepared a Program Environmental Impact Report (EIR). The Downtown Improvement Program Update EIR assessed all potentially significant impact [sic] and identified possible mitigation measures, in accordance with CEQA."

(Draft Downtown Specific Plan, Section 2, p. 13). SV/PEN believes, however, that contrary to the City's claims, the Specific Plan Amendments may not be within the scope of CEQA analysis presented in the Programmatic EIR, and thus the City was required to conduct further review under CEQA for the Specific Plan Amendments.

The Programmatic EIR states that it was prepared by the City "to provide a consolidated document describing the environmental consequences of a City-proposed Downtown Improvement Program Update project, comprised of a set of actions to maintain, update and expand the City's current Downtown Improvement Program." (Programmatic EIR, Section 1.1). The Programmatic EIR further states that the specific City actions that were proposed to implement the Downtown Improvement Program Update included adoption of amendments to the Downtown Specific Plan as well as adoption of amendments to the Zoning Code (and also amendments to the General Plan and Downtown Sunnyvale Redevelopment Plan).

3.18

However, the Draft Downtown Specific Plan appears to set forth various specific land use plans for the downtown area, most notably Block 18, that were not within the scope of analysis of the Programmatic EIR. SV/PEN has had insufficient time to review any and all deviations between the analysis in the Programmatic EIR and the Draft Downtown Specific Plan. It should be noted, however, that the Programmatic EIR explicitly stated that:

"The Town Center Mall is currently planned to undergo renovation. Beyond those existing renovation plans, the Design Plan does not call for substantial additional change in Town Center Mall District land use characteristics, except to recommend provision of retail uses along and oriented to Washington Avenue, and the proposed extension of Murphy Avenue adjacent to the mall."

(Programmatic EIR, Section 4.3.4) (Emphasis added). SV/PEN believes the Draft Downtown Specific Plan far exceeds the scope of impacts assessed in the Programmatic EIR.

The Draft Downtown Specific Plan, in stark contrast, calls for "re-establishing" the street grid in the downtown area, stating that the "construction of the original Town Center Mall removed these connections and any future redevelopment should re-establish these links wherever possible either as public rights-of-way or public private streets." (Draft Downtown Specific Plan, Section 4, p. 19). Included among the links possibly to be "re-established" are:

**JEFFER, MANGELS, BUTLER & MARMARO LLP**

September 22, 2003

Page 8

- McKinley Avenue between Mathilda Avenue and Sunnyvale Avenue
- Murphy Avenue between Washington and Iowa Avenue; and
- Taafee Street Between Washington and Iowa.

(Draft Downtown Specific Plan, Section 4, p. 19). The City thus is clearly contemplating a dramatic overhaul of Block 18, including extending these streets directly through the existing Town Center Mall. In fact, the City's plans are further clarified later in the document, where the "Key Points" for the Downtown Core Area are identified in part as: "To the extent possible, re-establish the traditional street grid in Block 18" and "Town Center Mall is encouraged to be converted to an open, outdoor shopping district to increase connectivity through the mall to areas north of Washington Avenue." (Draft Downtown Specific Plan, Section 6, p. 75). The City thus appears to have a clear plan for significant changes to Block 18.

SV/PEN is very concerned that the scope of the City's plans, not to mention the impacts associated with these plans, differ significantly between that which is discussed in the Programmatic EIR, and the discussion in the Draft Downtown Specific Plan. In fact, SV/PEN is concerned that the City is contemplating using private money to fund street expansions in manners that conflict with current uses and property interests. For example, in discussing the extension of Murphy and McKinley Avenues, the Draft Downtown Specific Plan indicates that the "Responsibility/Financing Measures" shall be "100% developer frontage improvement." (Draft Downtown Specific Plan, Section 9, p. 110).

3.18

The scope of the Draft Downtown Specific Plan clearly is far beyond those impacts in the Programmatic EIR. Under CEQA, the City was required to prepare an Initial Study ("IS") to determine whether the Specific Plan Amendments would cause any significant impacts not analyzed in the Programmatic EIR. (See Public Resources Code, § 21094(c), see also Cal. Code of Regs., Title 14, §§ 15152(f), 15063(b)(1)(C), (c)(3)(D).) The City appears to have sidestepped this requirement and simply concluded that because the Programmatic EIR discussed the need for amendments to the Specific Plan, that such discussion was sufficient to include the Draft Specific Plan under the environmental analysis in the Programmatic EIR. Such a conclusion, however, is belied by the discussion in the Draft Specific Plan.

#### **IV. The City Has Failed to Comply with Requirements Relating to Redevelopment**

To date, the City appears to have pursued changes to the redevelopment area absent a clear plan for an economic development strategy. (See, e.g., Draft Downtown Specific Plan, Section 9, p. 112). It also appears that the City is leaving SV/PEN outside of any discussions or plans relating to the Redevelopment Plan, even though it is clear that the City is required to involve SV/PEN in such actions. Under the Health & Safety Code, the City is required to permit SV/PEN to participate in the redevelopment process. See Health & Safety Code §§ 33339, 33345, 33380. To date, SV/PEN has received no notification of any discussions or actions relating to the Redevelopment Plan, and hereby requests such notice for any future actions.

3.19

**JEFFER, MANGELS, BUTLER & MARMARO LLP**

September 22, 2003

Page 9

Additionally, SV/PEN is concerned that the City has failed to date to address the consistency of any proposed or contemplated changes to the Redevelopment Plan with the General Plan, as required by law. See Health and Safety Code § 33331. Though the Programmatic EIR discusses redevelopment in various areas, its analysis of the project's consistency with local and regional plans in Chapter 16 fails to mention redevelopment consistency. This oversight by the City must be remedied.

3.20

**V. Summary**

SV/PEN has identified serious procedural and substantive deficiencies relating to both the Forum Application and the Specific Plan Amendments. Given these deficiencies, SV/PEN believes it is inappropriate for the Planning Commission to take further action on these matters, and therefore respectfully requests the following:

- (1) The Planning Commission should continue its scheduled September 22, 2003 public hearing on Forum's Application and Specific Plan Amendments for at least sixty (60 days);
- (2) During this time, the Planning Commission should refer both matters back to the Planning Department to address the concerns raised herein;
- (3) The Planning Department Staff and the Planning Commission should halt further analysis and/or consideration of Forum's SDP until the issues relating to the proposed General Plan Amendment are resolved; and
- (4) The City should transmit to SV/PEN copies of all public documents relating to Forum's Application, as well as any other plans relating to Block 18, the Town Center Mall, and SV/PEN's interests in the J.C. Penney Building.

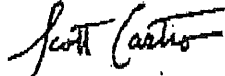
3.21

**JEFFER, MANGELS, BUTLER & MARMARO LLP**

September 22, 2003  
Page 10

We wish to thank you for the opportunity to comment on these matters, and look forward to further constructive discussions with the City.

Respectfully submitted,



Scott Castro for  
Jeffer, Mangels, Butler & Marmaro LLP

SNC/snc

cc: Laura Babcock, Planning Commission  
Dean Chu, Planning Commission  
Charles Hungerford, Planning Commission  
Otto Lee, Planning Commission  
Christopher Moylan, Planning Commission  
David Simons, Planning Commission  
Ron Swegles, Planning Commission  
Kelly Diekmann, Associate Planner





August 29, 2003

Mr. Ron Pfhof  
Forum Development Group, LLC  
300 Village Green Circle, Suite 200  
Smyrna, GA 30080

RE: Application Completeness 2003-0613

On August 7, 2003 we received your application for a General Plan Amendment (GPA) and Special Development Permit (SDP) generally situated upon Block 18 of the Downtown Specific Plan. On August 25, 2003 the GPA and SDP (2003-0613) were analyzed by the Project Review Committee (PRC) to determine application completeness, applicable standards of development, and recommendations for the project design going forward.

The PRC has determined that the application is incomplete at this time. The following list of requirements must be fulfilled prior to the City declaring an application complete. The completed application materials must be submitted to the Community Development Department by 5:00PM September 17, 2003 to maintain the scheduled hearing dates of Planning Commission on October 6, 2003 and City Council on October 14, 2003. Inability to satisfy any of the requirements below will result in a delay to processing the application.

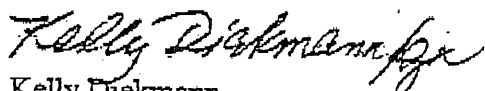
1. Signatures of the remaining affected property owners within the subject area:

*Target Bldg. -(Target Corporation)*  
*Macy's Bldg. -(Macy's West, Inc.)*  
*WHL Design Bldg. -(W1 Partnership)*  
*JC Penney- Harvest SV/PEN. Ltd.*

2. An agreement to indemnify and hold the City harmless from any liability, claim, cost, expense, or cause of action arising during or attributable to the described General Plan Amendment and/or Special Development Permit. (See enclosed)
3. Completed Impervious Surface Data sheet (re. Memo dated August 7, 2003 from Ronald B. Pfhol) (Form Enclosed)
4. Completed Environmental Information Form (re. Memo dated August 7, 2003 from Ronald B. Pfhol)
5. Completed Parking/Circulation Study (Completeness, including revisions, to be determined by the City)

Additionally, revised site plans and architectural plans that address the recommendations and incorporate the requirements provided by the Project Review Committee and charrette team must be received by September 20, 2003 to maintain the scheduled public hearing dates. A more detailed description of the requirements and submittal deadlines for revised plans will be sent separately.

Sincerely,



Kelly Diekmann  
Associate Planner

Cc: Robert Paternoster, Director of Community Development, City of Sunnyvale  
Trudi Ryan, Planning Officer, City of Sunnyvale  
Valerie Armento, City Attorney, City of Sunnyvale  
Mark Calvert, Managing Partner, Capital Management & Consulting LLC

**DRAFT**

8/28/00

**INDEMNIFICATION AGREEMENT BETWEEN THE CITY OF SUNNYVALE AND LEHMAN BROTHERS RELATED TO GENERAL PLAN AMENDMENT 2003-0613**

This AGREEMENT, made and entered into this day of September, 2003, by and between the CITY OF SUNNYVALE, a municipal corporation ("CITY"), and Forum Group, Lehman Brothers, (insert legal entity) (hereafter collectively referred to as "APPLICANT");

**RECITALS**

WHEREAS, CITY has initiated General Plan Amendment 2003-0613 ("the Project") at the request of APPLICANT, in order to facilitate APPLICANT'S development proposal for Block 18 of the Downtown Specific Plan; and

WHEREAS, in recognition and consideration of CITY's approval of General Plan Amendment 2003-0613 and related environmental impact report prepared in accordance with the California Environmental Quality Act (the "Project"), APPLICANT desires to indemnify CITY from liability or loss connected with the Project approval as provided herein;

**AGREEMENT**

NOW, THEREFORE, it is mutually agreed between CITY and APPLICANT as follows:

1. *Indemnification.* APPLICANT shall defend, indemnify and hold harmless CITY and its agents, officers and employees from and against any claim, action, or proceeding brought or asserted by a third person or entity against CITY or its agents, officers or employees to attack, set aside, void, or annul the Project, or any other action by CITY in connection with the Project, or to impose personal liability against such agents, officers or employees resulting from their involvement in the Project, which claim, action, or proceeding is brought *within* the time period provided by law, including any claim for private attorney general fees claimed by or awarded to any party from CITY, to the extent that such claim, action or proceeding does not arise from CITY's willful misconduct. To the extent that CITY uses any of its resources responding to such claim, action, or proceeding, APPLICANT shall reimburse CITY within thirty (30) days of the submission of an itemized statement for these resources. Such resources include, but are not limited to the reasonable expenses and charges related to staff time, court costs, City Attorney's time at their regular rate for external or non-City agencies, or any other reasonable direct or indirect costs associated with responding to the claim, action or proceeding.

2. *Binding Effect.* APPLICANT'S obligations under this Agreement shall apply regardless of whether any other permits or entitlements are issued. These obligations shall be binding on successors and assigns of the real property benefited by approval of the Project, and APPLICANT shall so obligate all transferees and assigns.

3. *Defense and Indemnity Procedures.* CITY will promptly notify APPLICANT in writing of any such claim, action, or proceeding. If CITY fails to cooperate in the defense as required by Section 4, below, then APPLICANT shall not thereafter be responsible to defend, indemnify and hold harmless CITY or its agents, officers and employees pursuant to this Agreement. After receipt from CITY of notice of any claim, or the commencement of any action or proceeding with respect to which indemnification is being sought under this Agreement by City, APPLICANT will assume the defense of such claim, action or proceeding, including the employment of counsel reasonably satisfactory to CITY and APPLICANT, and the prompt payment of the fees and disbursements of such counsel. In the event, however, CITY reasonably determines that having common counsel would present such counsel with a conflict of interest, or if APPLICANT fails to assume the defense of the claim, action or proceeding or to employ counsel reasonably satisfactory to CITY, in either case in a timely manner, then CITY may employ separate counsel to represent or defend it in any such claim, action or proceeding and APPLICANT will promptly pay the fees and disbursements of such counsel.

4. *Defense Participation.* CITY shall, within its unlimited discretion, in good faith, participate and cooperate in the defense of any such claim, action, or proceeding.

5. *No Settlement Without Approval of Applicant.* APPLICANT shall not be required to pay or perform any settlement of such claim, action or proceeding unless the settlement is approved in writing by APPLICANT.

6. *Security for Performance of Obligations.* Performance of APPLICANT's obligations pursuant to the agreement shall be secured by a letter of credit provided to CITY. If CITY believes that Applicant has not fulfilled its obligations as provided herein, CITY shall have the right to draw upon the letter of credit in an amount necessary to satisfy the obligations APPLICANT has not timely performed upon thirty (30) days advanced written notice to APPLICANT.

7. *Notices.* All notices to APPLICANT under this Agreement shall be deemed valid and effective five (5) calendar days following deposit in the United States mail, postage, prepaid, by certified and/or registered mail, addressed to [INSERT]

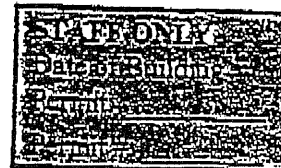
All notices to CITY under this Agreement shall be deemed valid and effective when personally served upon the City Attorney or upon deposit in the United States mail, postage prepaid, by certified and/or registered mail, addressed to City Attorney, Office of the City Attorney, P.O. Box 3707, Sunnyvale, California 94088-3707.

8. *Complete Agreement/Governing Law.* This Agreement represents the complete understanding between the parties with respect to matters set forth herein. This Agreement shall be construed in accordance with the laws of the State of California.

9. *Effective Date.* This Agreement shall not become effective unless and until General Plan Amendment 2003-0613 is approved by the City Council of the City of Sunnyvale.

IN WITNESS WHEREOF, the parties hereto have duly caused this Agreement be executed by their authorized representatives on the date hereinabove first written.

2-sided

SUNNYVALE  
*California*

## NPDES PERMIT PROVISION C.3. DATA FORM

**What Projects Apply?**

All applicants for projects creating, adding, or replacing 500 sq. ft. or more of impervious surface on the project site must fill out this worksheet and submit it to the Building Division prior to the issuance of a building permit. Interior remodeling projects and routine maintenance or repair projects, such as re-roofing and re-paving, are NOT required to complete this worksheet.

**What is an Impervious Surface?**

An impervious surface prevents the infiltration or passage of water into the soil. Impervious surfaces include building rooftops, paved patios, covered patios, driveways, parking lots, paved walkways, sidewalks and streets.

**For More Information**

For more information regarding selection of Best Management Practices for stormwater pollution prevention or stormwater treatment contact: Planning Division, Stormwater Prevention Information 408-730-7444.

Project Name: \_\_\_\_\_ APN # \_\_\_\_\_

Applicant Name: \_\_\_\_\_

Project Location: \_\_\_\_\_  
(address)

**1. Project Type (Check all that apply):**

☐ Residential ☐ Commercial ☐ Industrial ☐ Public

**2. Project size:**

a. Site size \_\_\_\_\_ sq. ft.

b. Existing impervious surface area (includes land covered by buildings, sheds, patios/covers, parking lots, streets, sidewalks, paved walkways and driveways) \_\_\_\_\_ sq. ft.

c. Impervious surface area created, added, or replaced \_\_\_\_\_ sq. ft.

d. Total impervious surface area (new + existing) \_\_\_\_\_ sq. ft.

e. Percent increase/replacement of impervious surface area \_\_\_\_\_ %

f. Estimated area of land disturbance during construction \_\_\_\_\_ sq. ft.  
(including clearing, grading, or excavating). c/b(100%)

**3. Type of Pesticide Reduction Measures Used (Check all that apply):**Description

- ☐ Education  
☐ Condition of Approval  
☐ Doesn't Apply

Code

PEDU  
PCOA  
DNA

**4. Types of Stormwater Controls Used (check all that apply):**Description

- ☐ Stormwater Treatment Measure  
☐ Source Control Measure  
☐ Site Design Measure  
☐ Doesn't Apply

Code

STM  
 SCM  
 SDM  
 DNA

**Examples of Stormwater Control Measures:**Stormwater Treatment

- ☐ Biofilter (veg. swale/strip)  
☐ Detention basin (dry)  
☐ Detention pond (wet)  
☐ Underground detention  
☐ Media filter (sand, organic matter, bioretention)  
☐ Hydrodynamic device (commercially available in-line treatment unit)  
☐ Infiltration trench  
☐ Porous pavement  
☐ Wetland basin  
☐ Wetland channel  
☐ Inlet filter  
☐ Other \_\_\_\_\_

Source Controls

- ☐ Wash area/racks, drain to sanitary sewer  
☐ Covered dumpster area, drain to sanitary sewer  
☐ Swimming pool drain to sanitary sewer  
☐ Beneficial landscaping (minimizes irrigation, runoff, pesticides and fertilizers; promotes treatment)  
☐ Outdoor material storage protection  
☐ Covers, drains for loading docks, maintenance bays, fueling areas  
☐ Maintenance (street sweeping, catch basin cleaning)  
☐ Other \_\_\_\_\_

Site Design

- ☐ Minimize land disturbance  
☐ Minimize impervious surfaces  
☐ Minimum-impact street or parking lot design  
☐ Cluster structures/pavement  
☐ Disconnect downspouts  
☐ Alternative driveway design  
☐ Microdetention in landscape  
☐ Preserve open space  
☐ Protect riparian and wetland areas, riparian buffers  
☐ Minimize change in runoff hydrograph  
☐ Other \_\_\_\_\_

**Reviewed:****Community Development Department**

Planning Division: \_\_\_\_\_ Date: \_\_\_\_\_

Data entry performed by: \_\_\_\_\_ Date: \_\_\_\_\_

Aside  
APPENDIX H

ENVIRONMENTAL INFORMATION FORM  
(To Be Completed by Applicant)

Date Filed \_\_\_\_\_

General Information

1. Name and address of developer or project sponsor: \_\_\_\_\_  
\_\_\_\_\_
2. Address of project: \_\_\_\_\_  
Assessor's Parcel Number: \_\_\_\_\_
3. Name, address and telephone number of person to be contacted concerning this project:  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_
4. Name and address of legal property owner:  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_
5. Indicate number of the permit application for the project to which this form pertains: \_\_\_\_\_
6. List and describe any other related permits and other public approvals required for this project, including those required by city, regional, state and federal agencies:  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_
7. Existing zoning district: \_\_\_\_\_
8. Present use of the site: \_\_\_\_\_  
\_\_\_\_\_

**Appendix H****Environmental Information Form****Page 4****Environmental Setting**

33. Describe the project site as it exists before the project, including information on topography, soil stability, plants and animals, and any cultural, historical or scenic aspects. Describe any existing structures on the site, and the use of the structures. Attach photographs of the site. Snapshots or Polaroid photos will be accepted.
34. Describe the surrounding properties, including information on plants and animals and any cultural, historical or scenic aspects. Indicate the type of land use (residential, commercial, etc.), intensity of land use (one-family, apartment houses, shops, department stores, etc.), and scale of development (height, frontage, setback, rear yard, etc.). Attach photographs of the vicinity. Snapshots or Polaroid photos will be accepted.

**Certification**

I hereby certify that the statements furnished above and in the attached exhibits present the data and information required for the initial evaluation to the best of my ability, and that the facts, statements, and information presented are true and correct to the best of my knowledge and belief.

\_\_\_\_\_  
Date\_\_\_\_\_  
Signature

For \_\_\_\_\_



Appendix H  
Environmental Information Form  
Page 3.

20. If the project involves a variance, conditional use or rezoning application, state this and indicate clearly why the application is required:

Are the following items applicable to the project or its effects? Discuss below all items checked yes. (attach additional sheets as necessary)

	<u>YES</u>	<u>NO</u>
21. Change in existing features of any bays, tidelands, beaches, lakes or hills, or substantial alteration of ground contours.	<u>          </u>	<u>          </u>
22. Change in scenic views or vistas from existing residential areas or public lands or roads.	<u>          </u>	<u>          </u>
23. Change in pattern, scale or character or general area or project.	<u>          </u>	<u>          </u>
24. Significant amounts of solid waste or litter.	<u>          </u>	<u>          </u>
25. Change in dust, ash, smoke, fumes or odors in vicinity.	<u>          </u>	<u>          </u>
26. Change in ocean, bay, lake, stream or ground water quality or quantity, or alteration of existing draining patterns.	<u>          </u>	<u>          </u>
27. Substantial change in existing noise or vibration levels in the vicinity.	<u>          </u>	<u>          </u>
28. Site on filled land or on slope of 10% or more.	<u>          </u>	<u>          </u>
29. Use of disposal of potentially hazardous materials, such as: toxic substances, flammables or explosives.	<u>          </u>	<u>          </u>
30. Substantial change in demand for municipal services (police, fire, water, sewage, etc.)	<u>          </u>	<u>          </u>
31. Substantially increase fossil fuel consumption. (electricity, oil, natural gas, etc.)	<u>          </u>	<u>          </u>
32. Relationship to a larger project or series of projects.	<u>          </u>	<u>          </u>

**Appendix H  
Environmental Information Form  
Page 2**

9. Proposed use of site (project for which this form is filed):

---

**Project Description**

10. Net lot area:

11. Building square footage:

12. Number of floors:

13. Amount of off-street provided:

Standard: \_\_\_\_\_

Compact: \_\_\_\_\_

14. Proposed scheduling:

15. Anticipated incremental development:

16. If residential, include the number of units, number of BMR units, schedule of unit sizes, range of sale prices or rents, and type of household size expected:

17. If commercial, indicate the type, whether neighborhood, city or regionally oriented, square footage of sales area, and loading facilities:

18. If industrial, indicate type, estimated employment per shift, and loading facilities:

19. If institutional, indicate the major function, estimated employment per shift, estimated occupancy, loading facilities, and community benefits to be derived from the project:



September 19, 2003

Kelly Dickmann  
Associate Planner  
City of Sunnyvale  
Planning Comm.

re: General Plan Amendment and Special Development Permit (2003-613)

On September 19, 2003, I requested access to and copying of, all public records pertaining to Forum Development Group, LLC's application for General Plan Amendment and Special Development Permit (2003-0613). You indicated that copying of relevant public records could not be performed until Tuesday, September 23, 2003, but could possibly be completed on Monday, September 22, 2003 if staff time became available.

This letter constitutes a formal request for copying of all relevant public records pertaining to the above-referenced GPA & SDP.

**Scott N. Castro**  
Attorney at Law

scastron@jmbm.com  
www.jmbm.com

**JMBM** Jeffer Mangels  
Butler & Marmaro LLP

A Limited Liability Partnership including Professional Corporations

Two Embarcadero Center, 5th Floor, San Francisco, CA 94111-3824  
(415) 398-8080 • fax (415) 398-5584 • direct (415) 984-9818

Scott Castro  
Jeffer, Mangels, Butler & Marmaro  
Two Embarcadero  
Fifth Floor  
San Francisco, CA 94111  
scastron@jmbm.com  
(415) 398-8080



**Castro, Scott**

---

**From:** Castro, Scott  
**Sent:** Saturday, September 20, 2003 1:31 PM  
**To:** 'Kelly Diekmann'  
**Subject:** RE: GPA Block 18 of DSP Staff Report for PC 9-22-03  
Mr. Diekmann,

I appreciate your forwarding of the link below, but unless I have made an error, it appears that there is still no Staff Report available for the General Plan Amendment request for Block 18. If possible, I would appreciate any clarification as soon as possible.

Thank you for addressing this matter.

**Scott Castro**

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-----Original Message-----

**From:** Kelly Diekmann [mailto:kdiekmann@ci.sunnyvale.ca.us]  
**Sent:** Friday, September 19, 2003 6:20 PM  
**To:** kdiekmann@ci.sunnyvale.ca.us  
**Subject:** GPA Block 18 of DSP Staff Report for PC 9-22-03

We apologize that the staff report for the Planning Commission Hearing on a General Plan Amendment request for Block 18 of the Downtown Specific Plan, scheduled for September 22, 2003, could not be posted on Friday night. Attached is an electronic copy of the report. The attached report is missing two attachments that were submitted as hard copy letter to the Planning Division. A complete report will be posted on the internet by Sunday evening the 21st.

[http://www.ci.sunnyvale.ca.us/community-dev/planning/pc/pc\\_current\\_year.htm](http://www.ci.sunnyvale.ca.us/community-dev/planning/pc/pc_current_year.htm)

Kelly Diekmann  
Associate Planner  
408-730-7659

# **EXHIBIT B**

**JEFFER, MANGELS, BUTLER & MARMARO LLP**

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REF./FILE NO.

64311-0002

October 6, 2003

**Via Facsimile and U.S. Mail**

Robert LaSala  
City Manager  
City of Sunnyvale  
City Hall  
P.O. Box 3707  
Sunnyvale, CA 94088-3707

Valerie Armento  
City Attorney  
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Trudi Ryan  
Planning Officer  
City of Sunnyvale Planning Department  
P.O. Box 3707  
Sunnyvale, CA 94088-3707

Re: Forum Development Group, LLC/Lehman Brothers Application for a General Plan Amendment (2003-0613) and Proposed Amendments to Downtown Specific Plan and Zoning Code (2001-0612)

Dear Ladies and Gentlemen:

On behalf of our client, Harvest SV/PEN, Ltd. ("SV/PEN"), we respectfully submit the following comments relating to No. 2002-0612<sup>1</sup>, proposed amendments to the Downtown Specific Plan and Zoning Code drafted to address changes to the General Plan made by the City Council in June 2003 ("Specific Plan Amendments"), scheduled to be heard this evening, October 6, 2003, during the City of Sunnyvale's Planning Commission ("Planning Commission") public hearing. SV/PEN had intended to submit comments on another matter scheduled to be heard this evening, relating to an application by Forum Development Group, LLC/Lehman

3.22

<sup>1</sup> This matter appears to have been referenced at different times by the City as either 2001-0612 or 2002-0612.



**JEFFER, MANGELS, BUTLER & MARMARO LLP**

October 6, 2003

Page 2

Brothers ("Forum") for a General Plan Amendment to increase the maximum development intensity and to increase the general office square footage permitted within Block 18 ("GPA"), but SV/PEN was notified on October 3, 2003, that this item would be continued indefinitely.<sup>2</sup> Based on this communication, SV/PEN limits its comments at this time to the proposed amendments to the Downtown Specific Plan, but hereby incorporates by reference its prior comments submitted on September 22, 2003, and reserves the right to provide comments on the GPA should the Planning Commission decide to address this matter.

We request that this current letter, as with our prior communications with the City, be included in the administrative records for items No. 2001-0612 and No. 2003-0613 as appropriate. We also request that copies of this letter and exhibits be distributed to each member of the Planning Commission upon receipt.

As was detailed in the September 22 SV/PEN letter, SV/PEN is owner of the former J.C. Penney building located in the Town Center Mall, a building which may be affected by the proposed Specific Plan Amendments. SV/PEN expresses some optimism that the indefinite continuance of Forum's proposed GPA demonstrates a willingness on the part of the City to address the concerns of property owners within Block 18, including SV/PEN.<sup>3</sup> However, SV/PEN remains concerned that the proposed Specific Plan Amendments are being processed by the City without adequate consideration for the interests of property owners located in Block 18.

3.22

Nonetheless, SV/PEN is hopeful that it can work with the City in a cooperative manner to take actions to revitalize the downtown area, most notably Block 18, while protecting the interests of current property owners. SV/PEN believes the indefinite continuance of Forum's proposed General Plan Amendments is the first step in this process, but believes that the City

<sup>2</sup> On the afternoon of October 3, 2003, SV/PEN received an e-mail communication from Robert Paternoster, Director of Community Development, stating that the "General Plan amendment requested by the Forum Development Group for Block 18 in Downtown, which was scheduled for Planning Commission public hearing on October 6, 2003, will be continued indefinitely." (A copy of this e-mail correspondence is attached hereto as Exhibit 1.) The Planning Commission's agenda for the October 6 hearing indicates that the Planning Staff recommends an indefinite continuance of this matter.

<sup>3</sup> Prior to receipt of Mr. Paternoster's e-mail on October 3, the City appeared intent on fast-tracking Forum's proposed GPA as well as other proposed changes to the downtown area. The City had evidenced little concern for SV/PEN's interests, or providing SV/PEN an opportunity to be heard. SV/PEN's September 22 letter details these concerns, including the fact that the City repeatedly failed to provide SV/PEN with notice of actions affecting its property as required by the Government Code. In fact, on September 25, 2003, SV/PEN sent a letter to the City Manager, the City Attorney, the Director of Community Planning, the Planning Officer, as well as to the members of the Planning Commission, objecting to the continued public hearing date of October 6th due to conflict with Yom Kippur, the holiest day of the Jewish calendar. As indicated in the September 25 letter, one of SV/PEN's principals is a member of the Jewish faith, and thus is unable to attend the hearing. In response, the City sent a response that only offered additional time at the October 6th hearing date for other representatives of SV/PEN to present testimony on behalf of their Jewish colleagues. This response seemed to signal a continued unwillingness of the City to address SV/PEN's concerns, even at the expense of conflict with an important religious holiday.

**JEFFER, MANGELS, BUTLER & MARMARO LLP**

October 6, 2003

Page 3

must still insure that its proposed Specific Plan Amendments do not unreasonably and unnecessarily impact the interests of existing property owners.

3.22

The following details SV/PEN's comments and concerns at this time.

**L. The City's Has No Basis to Now Seek to Extend McKinley Avenue From Mathilda Avenue to Sunnyvale Avenue**

**A. The City Now Proposes for the First Time Extending McKinley Avenue From Mathilda Avenue to Sunnyvale Avenue**

SV/PEN's chief concern relating to the Specific Plan Amendments is the City's apparent interest in re-establishing the street grid in the area of the Town Center Mall, most notably, extension of McKinley Avenue from Mathilda Avenue to Sunnyvale Avenue. Such a proposed extension of McKinley Avenue would adversely impact SV/PEN's interests in the J.C. Penney building, and on that basis, SV/PEN objects to the possible extension.

SV/PEN is aware that the City has been contemplating for some time a revitalization of the downtown area, including Block 18. For example, the Downtown Design Plan's stated goal is to create "an enhanced, traditional downtown serving the community with a variety of destinations in a pedestrian-friendly environment." (Draft Downtown Design Plan, Letter of Transmittal, March 26, 2002). SV/PEN supports this general aim. However, SV/PEN objects to any extension of McKinley Avenue that would adversely impact the J.C. Penney building, including extending McKinley Avenue from Mathilda Avenue to Sunnyvale Avenue.

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SV/PEN is concerned that the City may seek to re-establish the street grid in the area of the Town Center Mall in a manner differing from what it previously had considered. The Draft Downtown Specific Plan calls for "re-establishing" the street grid in the downtown area, stating that the "construction of the original Town Center Mall removed these connections and any future redevelopment should re-establish these links wherever possible either as public rights-of-way or public private streets." (Draft Downtown Specific Plan, Section 4, p. 19) (emphasis added). Included among the links possibly to be "re-established" are:

- McKinley Avenue between Mathilda Avenue and Sunnyvale Avenue
- Murphy Avenue between Washington and Iowa Avenue; and
- Taafee Street Between Washington and Iowa.

(Draft Downtown Specific Plan, Section 4, p. 19). Thus, it appears the City is contemplating the full extension of McKinley Avenue, which was not addressed in the prior documents prepared by the City. This plan is repeated later in the document, where it is stated that:

"McKinley Avenue has the potential of being reconnected from Mathilda to Sunnyvale Avenue to re-establish the street grid.

**JEFFER, MANGELS, BUTLER & MARMARO LLP**

October 6, 2003

Page 4

McKinley Avenue will be a significant connection between Mathilda and the principal retail component of the downtown."

(Draft Downtown Specific Plan, p. 40.) The City's plan is further clarified later in the document, where the "Key Points" for the Downtown Core Area are identified in part as: "To the extent possible, re-establish the traditional street grid in Block 18" and "Town Center Mall is encouraged to be converted to an open, outdoor shopping district to increase connectivity through the mall to areas north of Washington Avenue." (Draft Downtown Specific Plan, Section 6, p. 75). Re-establishment of the street grid in the area of the Town Center Mall is also discussed on pages 38 and 98 of the Draft Downtown Specific Plan. In fact, Figure 7.1 of the Draft Downtown Specific Plan indicates a "Desired Street/Connection" on McKinley Avenue from Taaffe Street to Sunnyvale Avenue. The Draft Downtown Specific Plan further calls for 100% developer frontage improvement at the time of development to support this extension. (See Draft Downtown Specific Plan, p. 111.)

**B. The City's Prior Discussions of Re-establishing the Street Grid Did Not Discuss Extending McKinley Avenue as Currently Suggested**

This full extension of McKinley Avenue from Mathilda Avenue to Sunnyvale Avenue is something that has not previously been discussed. Prior discussions and analyses of re-establishing the street grid do not appear to have contemplated this extension. For example, in the June 17, 2003 Staff Report for the proposed amendments to the General Plan (#2002-0612), it is stated that "[t]he [Downtown Design] plan also proposes new streetscape designs with wider sidewalks and pedestrian amenities, as well as a new plan to 'de-mall' the mall with open-air pedestrian connections and reintroduction of some of the original street grid." (June 17, 2003 Staff Report, p. 2) (emphasis added).

3.23  
Cont'd

In fact, it appears the City previously considered only a limited extension of McKinley Avenue. In the Sunnyvale Downtown Improvement Program Update Initial Study and Environmental Checklist Form, ("IS"), the City indicated that

"McKinley Avenue would be extended one Subdistrict east (Subdistrict 18a) from Mathilda Avenue to the mall, and lined on both sides with new shops. The extensions of Murphy and McKinley would be connected by a major pedestrian way through the mall (Subdistrict 18)."

(IS, p. 5) (emphasis added). This is nearly identical to the language in the Draft Environmental Impact Report for the Sunnyvale Downtown Improvement Program Update ("Program DEIR"), circulated in March 2003, which states:

"McKinley Avenue would be extended one block east from Mathilda into the mall, and lined on both sides with new shops."

**JEFFER, MANGELS, BUTLER & MARMARO LLP**

October 6, 2003

Page 5

The extensions of Murphy and McKinley would be connected by a major pedestrian way through the mall."

(Program DEIR, p. 2-2; see also p. 3-10.) Thus, it is clear that the City originally contemplated only extending McKinley one block into the east side of the current mall area.

In fact, during the Planning Commission's public hearing on the proposed amendments to the General Plan on June 4, 2003, Ms. Trudi Ryan, Planning Officer for the City, apparently stated that only certain street grids could be re-opened but that there were certain streets which could not be opened: "There are some of the [street] grids that may never be opened such as J.C. Penney and Macy's..." (June 4, 2003 Planning Commission Minutes, p. 4). Mr. Paternoster apparently made similar comments about "some concerns with requiring the reestablishment of the [street] grid." (June 4, 2003 Planning Commission Minutes, p. 4.) At the close of the public hearing, the Planning Commission voted 5-1 "to pursue the re-establishment of the street grid." (June 4, 2003 Planning Commission Minutes, p. 12.)

Thus, it is clear that the City was cognizant of limitations on any ability to re-establish the full street grid in the Town Center Mall, particularly in relation to the J.C. Penney building. Currently, however, the Draft Downtown Specific Plan appears to contemplate this very action, even though various sources in the City are on the record as indicating that this is not a viable plan, and the EIR for the Downtown Improvement Program Update did not analyze such action.

SV/PEN believes that the desire to re-establish a full street grid in the Town Center Mall area is something that the City may have not originally contemplated when it amended the General Plan in June 2003, but rather is something that Forum has been advocating in connection with its plans for redevelopment of the Town Center Mall. The record appears to reflect this belief. For example, Ron Pfohl, representing Forum during the City Council's June 17, 2003 public hearing in which the City adopted amendments to the General Plan, is on record as supporting the Downtown Plan, stating that Forum "is in favor of opening up the street grid [in Block 18]." (City Council Minutes, June 17, 2003.) This statement confirms statements in a May 15, 2003 San Jose Mercury News article, in which it is stated that Forum "plans to demolish the dying Sunnyvale Town Center and help the city return to the traditional downtown it abandoned in the 1970s."

3.23  
Cont'd

Ironically, on the one occasion when Forum met with SV/PEN, it presented a plan for redevelopment of Block 18 that left the J.C. Penney building intact, while providing for increased pedestrian flow and other features currently being pursued by the City. SV/PEN was comfortable with the general conceptual plans as proposed at that time (though SV/PEN did have concerns relating to parking and access), but is now faced with possible actions by the City that appear to support a new approach by Forum. SV/PEN is thus concerned that the new plans reflected in the Draft Downtown Specific Plan to extend McKinley from Mathilda Avenue to Sunnyvale Avenue are now on the table to accommodate the interests of Forum, and to bolster Forum's plans for redeveloping downtown, in a manner possibly adverse to SV/PEN's ownership of the J.C. Penney building.

**JEFFER, MANGELS, BUTLER & MARMARO LLP**

October 6, 2003

Page 6

SV/PEN has already articulated its concerns relating to Forum's plans in letters to the City dated September 22 and 25, 2003. It appears that based in part on these letters, the Planning Commission will continue indefinitely any action on Forum's proposed GPA (and by extension, Forum's plans for a Special Development Permit). The City should likewise delay any current efforts, reflected in the Specific Plan Amendments, to accommodate Forum's plans. In the bankruptcy proceeding relating to the Town Center Mall, counsel for Lehman Brothers requested a minimum two-month extension on its bankruptcy plan, which originally was scheduled for October 8, 2003. Thus, it is clear that any plans contemplated by Forum for redevelopment of Block 18 will take a long time to be developed. Given this, the City should not go out of its way to accommodate Forum's nascent plans at the expense of existing property owners, most notably SV/PEN, Macy's and Target, who have very real and immediate interests in Block 18.

3.23

In fact, it is important to note that an entire section of the Draft Downtown Specific Plan discusses the proposed vision for McKinley Avenue, and yet there is no mention of the J.C. Penney Building. Such a significant, and possibly intentional, oversight is improper given the clear deference being afforded Forum, and it should be redressed prior to any further action on the proposed Specific Plan Amendments. Thus, SV/PEN respectfully requests that the Planning Commission revisit the Draft Downtown Specific Plan to address the issues raised herein prior to taking any action.

**C. The Specific Plan Amendments Fail to Provide Adequate Analysis Under the California Environmental Quality Act ("CEQA")**

In addition to SV/PEN's concerns about the City's efforts to push forward with a new plan that apparently is tailored to accommodate Forum's plans for Block 18, SV/PEN is concerned that the Specific Plan Amendments may fail to analyze possibly significant impacts as required by CEQA. The Staff Report for the Specific Plan Amendments assumes that the amendments fall within the scope of the EIR for the Downtown Improvement Program Update, stating that "[t]he proposed amendments to the Downtown Specific Plan and Zoning Code are components of and consistent with the Project analyzed in the Program EIR, therefore no additional review is required." (City of Sunnyvale Planning Commission Report, No. 2001-0612--Downtown Specific Plan and Associated Zoning Code Amendments, October 6, 2003 "SPA Staff Report", p. 3.) The SPA Staff Report thus seems to assume that the Specific Plan Amendments fall within the environmental analysis conducted in the Programmatic EIR.

3.24

Similarly, the Draft Downtown Specific Plan states that:

"Pursuant to State and Local CEQA Guidelines, the City of Sunnyvale determined that the Specific Plan could result in significant environmental impacts and prepared a Program Environmental Impact Report (EIR). The Downtown Improvement Program Update EIR assessed all potentially

**JEFFER, MANGELS, BUTLER & MARMARO LLP**

October 6, 2003

Page 7

significant impact [sic] and identified possible mitigation measures, in accordance with CEQA."

(Draft Downtown Specific Plan, Section 2, p. 13). SV/PEN believes, however, that contrary to the City's claims, the Specific Plan Amendments may not be within the scope of the Program EIR CEQA analysis, and thus the City is required to conduct further review under CEQA for the proposed Specific Plan Amendments.

SV/PEN believes that the proposed extension of McKinley Avenue, not to mention other specific street configurations discussed in the Draft Downtown Specific Plan, are not within the scope of the environmental analysis in the EIR certified for the Sunnyvale Downtown Improvement Program Update in June 2003. In fact, SV/PEN is concerned that the City is contemplating using private money to fund street expansions in manners that conflict with current uses and property interests. As SV/PEN noted in its September 22 letter, under CEQA the City was required to prepare an Initial Study ("IS") to determine whether the Specific Plan Amendments would cause any significant impacts not analyzed in the Programmatic EIR. (See Public Resources Code, § 21094(c), see also Cal. Code of Regs., Title 14, §§ 15152(f), 15063(b)(1)(C), (c)(3)(D)). The City has not done this, but only provided the conclusion that the Draft Downtown Specific Plan falls within the prior CEQA analysis. Again, as discussed above, this is clearly not the case.

3.24

## **II. The City Must Involve SV/PEN in Any Decisions Affecting Parking and Access for the J.C. Penney Building**

SV/PEN formally requests that the Planning Commission to involve SV/PEN in any discussions relating to parking and access for the proposed changes to Block 18. It simply is inappropriate for the City to conduct further studies, meetings or sessions relating to parking and access without the involvement of SV/PEN, as well as Macy's and Target, given the parties' respective ownership interests in Block 18.

Though the Draft Downtown Specific Plan contains only general discussions relating to parking<sup>4</sup>, preliminary indications from this document suggest some potential areas of concern for SV/PEN. For example, Table 7.2 indicates that a parking structure is planned in between McKinley and Washington Avenues and Murphy and Sunnyvale Avenues. SV/PEN is concerned that this proposed parking structure could negatively impact the J.C. Penney building, and thus wishes clarification on this plan. Furthermore, SV/PEN wants to be involved in any other discussions regarding parking planned for Block 18 because of the obvious implications that new or revised parking plans could have on the J.C. Penney building.

3.25

<sup>4</sup> For example, the Draft Downtown Specific Plan states that parking for Block 18 will be a mix of "[a]bove grade structures and surface parking." (Draft Downtown Specific Plan, p. 83.)

**JEFFER, MANGELS, BUTLER & MARMARO LLP**

October 6, 2003

Page 8

Furthermore, SV/PEN is concerned that the circulation and access issues for Block 18 have not been sufficiently analyzed or assessed under CEQA. For example, the Draft Downtown Specific Plan states that:

"A total of 33 intersections were analyzed for level of service, along with seven neighborhood street segments and four freeway segments. Study intersections and roadway segment operations were evaluated during the morning and evening peak hours. The City of Sunnyvale traffic modal was used to forecast 2020 project conditions."

(Draft Downtown Specific Plan, p. 99.) However, SV/PEN questions the accuracy of the traffic impacts analysis given the fact that the EIR for the Sunnyvale Downtown Improvement Program Update did not appear to discuss level of service or other traffic issues for the street grid configuration now possibly before the Planning Commission. For example, Figure 7.5 of the EIR addresses peak-hour intersection volumes and lane geometry for the downtown area, yet does not show any intersection volumes for the portion of McKinley currently within the boundaries of the Town Center Mall (i.e., where the Draft Downtown Specific Plan calls for the possible extension of McKinley Avenue). SV/PEN cannot assess from the current documentation how the City's proposed amendments to the Downtown Specific Plan relate to the traffic analysis provided in the Sunnyvale Downtown Improvement Program Update EIR.

3.26

Thus, SV/PEN is concerned that the traffic analysis and CEQA determinations set forth in the EIR for the Sunnyvale Downtown Improvement Program Update do not adequately address the different street configurations, and resulting traffic patterns, now contemplated by the Planning Commission. On this basis, SV/PEN must object to the current traffic and circulation analysis, and requests that if the City intends to extend various streets and avenues in the Town Center Mall area, it must first develop a supplemental traffic analysis to address these different traffic and circulation issues. SV/PEN also requests that the City involve SV/PEN in addressing any future circulation and access issues relating to Block 18.

### **III. The City Must Work with SV/PEN to Implement Any Design Features Discussed in the General Design Guidelines**

The Draft Downtown Specific Plan sets forth a host of General Design Guidelines relating to the design features of buildings in the downtown area. SV/PEN notes that this discussion appears to make no mention of how the City will approach design features for existing buildings. (See Draft Downtown Specific Plan, Chapter 5.) Again, SV/PEN is concerned that the City is pursuing specific design features at this time, predicated on Forum's plans for redeveloping Block 18, when those plans will likely be delayed for some time based on the bankruptcy proceedings. These concerns seem particularly relevant given the indefinite delay of Forum's GPA.

3.27

**JEFFER, MANGELS, BUTLER & MARMARO LLP**

October 6, 2003

Page 9

Thus, SV/PEN objects in general to the requirements set forth the Draft Downtown Specific Plan to the extent the City would seek to force SV/PEN to redesign the J.C. Penney Building to conform with the design criteria identified. SV/PEN is willing to work with the City to bring the J.C. Penney building into general conformity with the design goals for the downtown area, but SV/PEN is unwilling to allow the City carte blanche authority to require redesign of the J.C. Penney Building. Accordingly, SV/PEN requests that the City include a discussion in the Draft Downtown Specific Plan addressing how the City will deal with existing structures in the downtown area, most notably the J.C. Penney Building, in terms of design features.

3.27

**IV. Summary**

SV/PEN appreciates that the City has continued Forum's GPA indefinitely. However, SV/PEN believes that the language in the Draft Downtown Specific Plan continues to present significant issues of concern to SV/PEN's interests. In particular, the City appears to have begun to consider in the last few months significant alterations to the street configuration in the Town Center Mall, most notably the extension of McKinley Avenue from Mathilda Avenue to Sunnyvale Avenue. SV/PEN wishes to work with the City to develop a plan for the area that works for all involved parties, but SV/PEN remains concerned that the City is contemplating actions that would create unnecessary conflict with SV/PEN's property interests in the J.C. Penney building. On this basis, SV/PEN respectfully requests that the Planning Commission continue the public hearing on the proposed Specific Plan amendments, and:

3.28

- (1) Direct Planning Staff to revise the Draft Downtown Specific Plan such that a full extension of McKinley Avenue from Mathilda Avenue to Sunnyvale Avenue is not discussed therein;
- (2) Direct Planning Staff to re-assess traffic and circulation issues in light of the issues raised in this letter; and
- (3) Direct Planning Staff to revise the Draft Downtown Specific Plan to include a discussion and protocol for addressing design features of existing buildings in the downtown area.




**JEFFER, MANGELS, BUTLER & MARMARO LLP**

October 6, 2003

Page 10

We wish to thank you for the opportunity to comment on these matters, and look forward to further constructive discussions with the City.

Respectfully submitted,



Scott Castro for

Jeffer, Mangels, Butler &amp; Marmaro LLP

SNC/snc

cc: Laura Babcock, Planning Commission  
Dean Chu, Planning Commission  
Charles Hungerford, Planning Commission  
Otto Lee, Planning Commission  
Christopher Moylan, Planning Commission  
David Simons, Planning Commission  
Ron Swegles, Planning Commission  
Kelly Diekmann, Associate Planner

**EXHIBIT 1**

**Castro, Scott**

---

**From:** Robert Paternoster [rpaternoster@ci.sunnyvale.ca.us]  
**Sent:** Friday, October 03, 2003 3:37 PM  
**To:** trouble@harvestpartners.net  
**Cc:** mark@calverts.net; Valerie Armento; rpfohl@forumdevgroup.com; ebarnett@harvestpartners.net; snc@jmbm.com  
**Subject:** Continuation of Planning Commission Hearing on General Plan Amendment

This is to confirm our telephone conversation of this afternoon. The General Plan amendment requested by the Forum Development Group for Block 18 in Downtown, which was scheduled for Planning Commission public hearing on October 6, 2003, will be continued indefinitely. You will be notified if and when this matter is rescheduled for public hearing. This matter will also be continued indefinitely on the City Council agenda of October 14, 2003.

The proposal to amend the Downtown Specific Plan, initiated by the City Council when they acted on the Downtown Design Plan, will still be heard by the Planning Commission on October 6, 2003, and by the City Council on October 14, 2003. As you requested, I have attached a summary which, to the best of my knowledge, contains all references in the Specific Plan amendment to the recreation of the historic downtown street grid.

## **LIST OF REFERENCES IN THE DRAFT DOWNTOWN SPECIFIC PLAN 2003 to "RESTORATION OF THE STRID GRID"**

This list is intended to be as comprehensive as possible.

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pg. 5 This 2003 Downtown Specific Plan is intended as an update of the 1993 Downtown Specific Plan. Specifically, this plan increases the number of residential units, emphasizes reconnection of the street grid in the Town Center area and creates a sense of arrival along Mathilda Avenue with wider sidewalks and taller buildings.

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pg. 8

### **Connections**

Creating a well-organized and comfortable series of connections throughout the downtown is a high priority. These connections should include the following:

- Re-establishing the street grid
- Improving Street Character
- Facilitating the use of mass transit

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pg. 10 The Specific Plan envisions future transportation improvements in the following areas:

- Establishment of new streetscape designs, including wider sidewalks and landscaping throughout the downtown
- Enhancement of bus transfer facility on Frances Street
- Creation of bicycle lanes on Evelyn, Iowa and Sunnyvale Avenues
- Creation of "boulevard" configuration for Mathilda Avenue, including pedestrian, and frontage improvements
- Reconfiguration of Washington Avenue at Mathilda intersection
- Restoration of as much of the original street grid as possible
- Installation of Mathilda Avenue railroad overpass improvements

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Pg. 19

### **Connections**

#### **RE-ESTABLISHING THE STREET GRID**

An important part of the street plan is to re-establish the original street grid and its relationship to Washington and Mathilda Avenues. The construction of the original Town Center mall removed these connections and any future redevelopment should re-establish these links wherever possible either as public rights-of-way or public/private streets. These possible links include:

- McKinley Avenue between Mathilda Avenue and Sunnyvale Avenue
- Murphy Avenue between Washington and Iowa Avenue
- Taaffe Street between Washington and Iowa Avenue

The McKinley Avenue extension provides access to retail space. The Murphy Avenue extension will establish strong connections between the new retail development and the successful businesses on Murphy Avenue. All efforts should be made to create a direct link between the McKinley and Murphy street

extensions, either as a complete roadway or a substantial pedestrian pathway. Lastly, the Taaffe extension will increase foot traffic and access between Iowa and the businesses north of Washington Avenue.

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Pg. 27

**A. Site Design and Organization**

- A.1. Maintain the existing downtown street grid and, to the extent feasible, reconstruct the grid where interrupted by Town Center Mall.
- 

Pg. 38

**Commercial Core District (Blocks 1, 1a, 2, 3, 13, 18 and 20)**

The commercial core consists of Blocks 1, 1a, 2, 3, 13, 18 and 20 and is generally defined by Mathilda Avenue, Sunnyvale Avenue, Iowa Avenue and Evelyn Avenue. The District also extends along the east side of Mathilda to El Camino Real. The district supports a wide variety of uses ranging from Class "A" office, regional commercial retail, local retail and personal service businesses, and high-density housing. The commercial core also contains a transportation hub for Sunnyvale with a Caltrain rail station, bus transfer facility, and surrounding regional roadways. Other assets include existing 5 and 6-story office buildings, a City Plaza, historic Murphy Avenue, and major department store anchors.

This district has two main goals: to link the different blocks together into a cohesive downtown core and to create a lively street life on all primary streets. Re-establishment of the street grid, increased pedestrian connections, architectural designs and consistent streetscape features will also contribute to linking different areas of the downtown. In addition, street life and vitality are key to providing a vibrant downtown. Ground floor retail, restaurant, and entertainment land uses increase street activity with residential uses facilitating use of the downtown during day and night. High levels of architectural detail for pedestrian interest are important to create a pleasant pedestrian experience.

**Key Points for the Downtown Core Area**

*Increase Connectivity*

- To the extent possible, re-establish the traditional street grid in Block 18.
- 

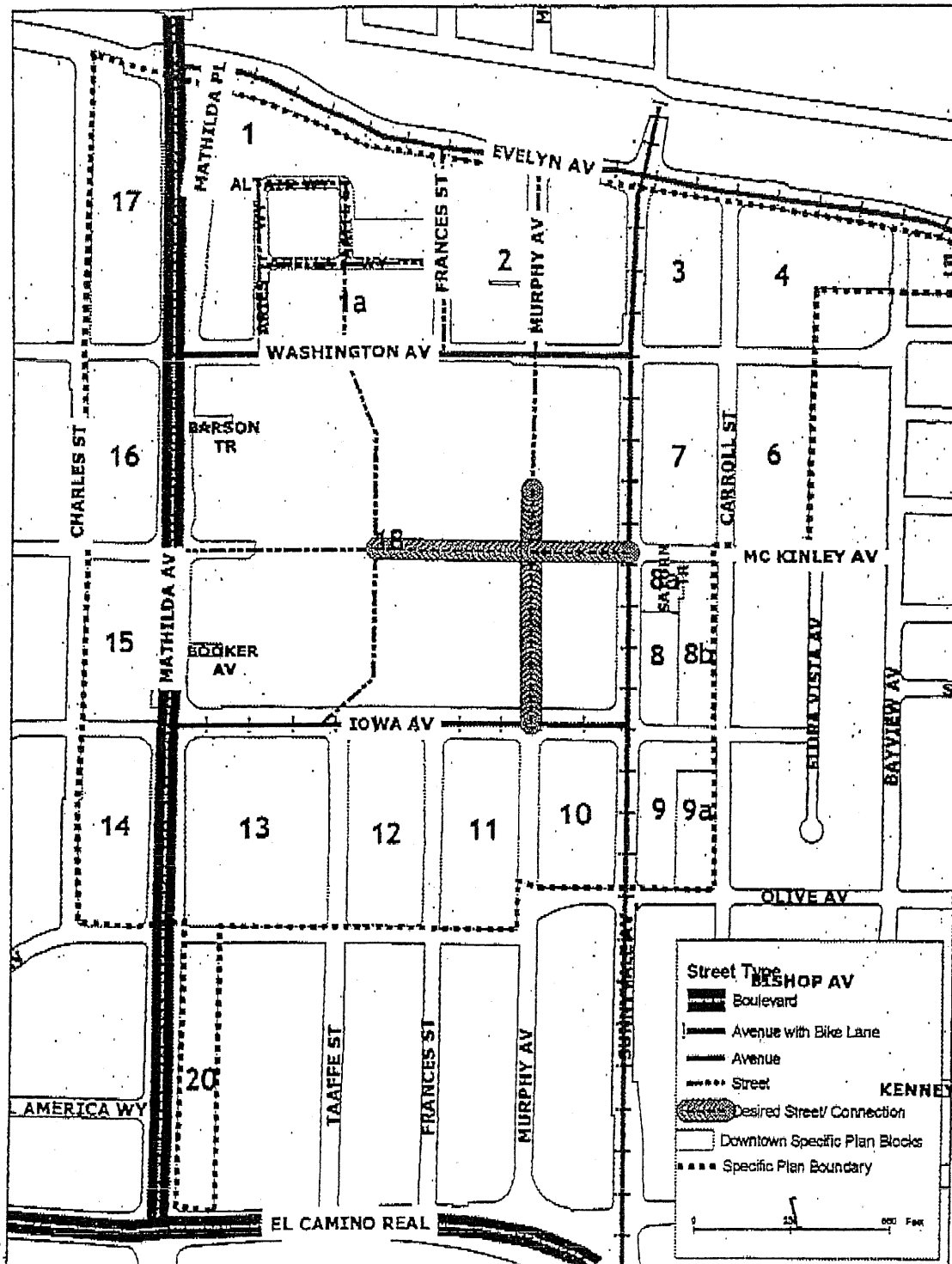
Pg. 40

**McKinley Avenue**

McKinley Avenue has the potential of being reconnected from Mathilda to Sunnyvale Avenue to re-establish the street grid. McKinley Avenue will be a significant connection between Mathilda and the principal retail component of the downtown.

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Pg. 95



pg. 98

A primary objective of the Downtown Specific Plan is to encourage walking in the downtown by enhancing existing pedestrian routes and creating convenient connections through downtown. To accomplish these connections, the Plan coordinates the pedestrian circulation system with new open space opportunities, primary downtown destinations and public transit hubs.

Pedestrian circulation is being enhanced through four methods:

1. Restoration of the street grid.

